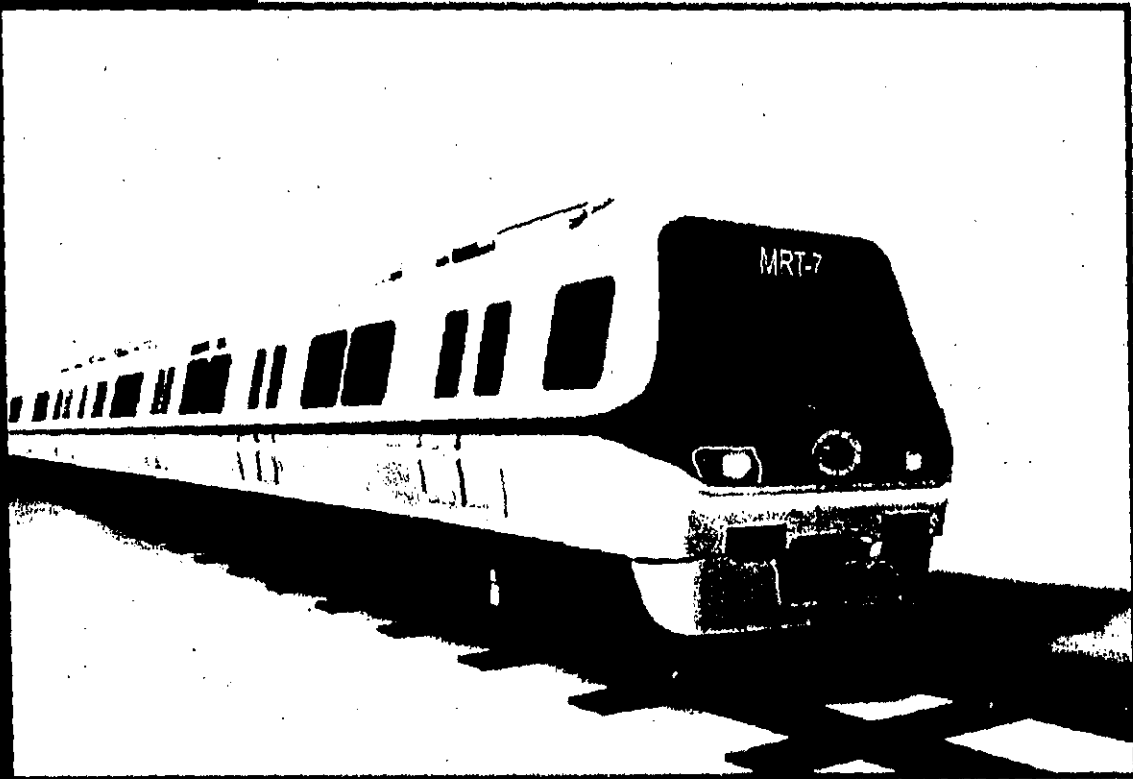




ART - 7 AGREEMENT



MRT 7 AGREEMENT

This AGREEMENT entered into this 18th day of June 2008 in QUEZON CITY, by and between:

The REPUBLIC OF THE PHILIPPINES ("ROP"), acting through the DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS ("DOTC"), a department under the executive branch of the Government, with office address at The Columbia Tower, Ortigas Avenue, Mandaluyong City, and represented herein by its Secretary, LEANDRO R. MENDOZA, and hereinafter referred to as the "ROP/DOTC";

-- and --

UNIVERSAL LRT CORPORATION (BVI) LIMITED, a corporation duly organized and existing under and by virtue of the laws of the British Virgin Islands, with registered office address at c/o Robertson Hasell Ltd., 1712 Tower One, Times Square, 1 Matheson St., Hong Kong SAR, herein represented by its duly authorized representative, ELI LEVIN, and hereinafter referred to as the "ULC";

(ROP/DOTC and the ULC shall be collectively referred to as the "Parties")

WITNESSETH, THAT:

WHEREAS, the ULC in collaboration with Alstom S.A. submitted to the ROP, through the DOTC, an unsolicited proposal for the financing, design, construction, supply, completion, testing, commissioning, and Operation and Maintenance of the MRT Line 7 Project (the "Project"), which is an integrated transportation system, under a Build-Gradual Transfer-Operate, Maintain and Manage (BGTOM) scheme which is a modified Build-Transfer-Operate (BTO) arrangement, under Republic Act No. 6957 as amended by Republic Act No. 7718, otherwise known as the BOT Law, and its Implementing Rules and Regulations, to address the transportation needs of passengers and to alleviate traffic in Metro Manila, particularly traffic going to and coming from Northern Luzon;

WHEREAS, the ULC organized UNIVERSAL LRT CORPORATION LIMITED ("ULC HK") as the special project company to act as the proponent for the Project and to receive the ULC's rights, title, interest and obligations under this Agreement;

WHEREAS, the ULC has designated the ULCOM Company, Inc. as the Facility Operator and the Maintenance Provider to operate and maintain the Project;

WHEREAS, on 03 July 2003, the DOTC, after evaluating the complete proposal of the ULC, accepted the same with some modifications and revisions, and

officially endorsed the said modified and revised unsolicited proposal (the "Proposal") to the Investment Coordination Committee ("ICC") of the National Economic Development Authority ("NEDA") Board for clearance and approval;

WHEREAS, the ICC, after having found the Project to be legally, technically, economically and financially viable, granted clearance to the Proposal, approved the Project on 26 March 2004 and thereafter set the negotiating parameters therefor;

WHEREAS, in accordance with the negotiating parameters set by the ICC, the DOTC and the ULC conducted in-depth negotiations of the scope and implementation arrangements of the Project which were then embodied in the terms of reference/tender documents for the solicitation of comparative proposals;

WHEREAS, the draft Agreement resulting from said negotiations was submitted to the ICC for review and validation, which was then subsequently cleared, validated and approved on a no-objection basis on 16 August 2006, and thereafter, was utilized as the basis of the draft contract that was made a part of the tender documents;

WHEREAS, the Swiss Challenge Phase for the Project ensued when the invitation for comparative proposals for the Project was published every week for three (3) consecutive weeks, in the following newspapers of general circulation: The Manila Standard Today, (on 26 February 2007, 03 March 2007, and 05 March 2007); The Manila Times (on 25 February 2007, 03 March 2007, and 05 March 2007); and The Philippine Star (on 25 February 2007, 03 March 2007, and 05 March 2007);

WHEREAS, after sixty (60) working days from date of issuance of tender/bidding documents on 26 June 2007, no comparative proposals were submitted; and

WHEREAS, the ROP/DOTC issued the corresponding Notice of Award on 31 January 2008;

NOW THEREFORE, for and in consideration of the foregoing premises and subject to the covenants, undertakings, terms and conditions hereunder, the Parties hereby agree as follows:

Section 1. RULES OF INTERPRETATION AND DEFINITIONS.

1.1. Rules of Interpretation – In this Agreement:

- a. "Include", "includes" and "including" are deemed to be followed by "without limitation" whether or not in fact followed by such words or words of like import.
- b. "Writing", "written" and similar terms refer to printing, typing, lithography and other means of reproducing words in a visible form.
- c. Any instrument, document, agreement or contract referred to

below means, unless the context otherwise requires, such instrument, document, agreement or contract as may be from time to time amended, modified or supplemented. Any term defined below by reference to any instrument, document, agreement or contract has such meaning whether or not such instrument, document, agreement or contract is in effect.

- d. References to a person, unless the context otherwise requires, also refer to his successors and assigns.
- e. "Hereof", "herein", "hereunder" and comparable terms refer to this entire Agreement and not to any particular section, subsection, paragraph or other subdivision hereof or attachment hereto.
- f. References to any gender include, unless the context otherwise requires, references to all genders, and references to the singular includes, unless the context otherwise requires, references to the plural and vice versa.
- g. "Shall" and "will" have equal force and effect.
- h. Annexes, Attachments, and Exhibits to this Agreement are made integral parts hereof.
- i. Headings are for convenience only and shall not affect the interpretation thereof.
- j. Wherever under this Agreement any Party is obliged to exercise a discretion, grant a consent or permit, or give an approval, or notify or acknowledge any event, such discretion shall be exercised reasonably and such consent, permit or approval may not be unreasonably withheld or delayed and such notification or acknowledgment shall be given expeditiously.

1.2. **Definitions** - In this Agreement, each of the following capitalized terms has the meaning set forth below, unless the context clearly indicates otherwise:

- a. "Abandonment" shall mean unjustified failure to do the Engineering Procurement Construction Works for a consecutive period of ninety (90) days or to operate or maintain the Project continuously for six (6) months;
- b. "Actual Fare" means the actual fare to be charged passengers of the MRTS as provided under Section 16 hereof;
- c. "Agent Bank" refers to a universal bank authorized to do business in the Philippines jointly selected by the Parties as the

escrow agent under the Escrow Agreement and with which the Passenger Revenue Account shall be opened;

- d. "Agreed Fare" shall have the same meaning as used and referred to in Section 16.2 hereof;
- e. "Agreement" means this MRT 7 Agreement, including its Annexes and Attachments, as may be from time to time amended, revised, modified or supplemented;
- f. "Amortization Payments" (formerly referred to as "Capacity Fee" in the original proposal and the DOJ Opinion No. 72, Series of 2003) shall refer to the amortization payments or amounts in the currencies specified in the Schedule of Payment, **net of value added taxes**, if any, as may be authorized to be adjusted in accordance with this Agreement, in consideration for the transfer of the Project which shall be effected gradually throughout the Concession Period as specified in Section 6.2 hereof;
- g. "Amortization Payment Account" shall have the same meaning as used and referred to in Section 7.1 hereof;
- h. "Applicable Law" means with respect to a Person, any domestic or foreign statute, law, ordinance, rule, administrative interpretation or guidance, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any Governmental Authority, that is applicable to such Person, or any of its respective properties, assets or Representatives (in connection with any such Representative's activities on behalf of such Person);
- i. "Basic Design" shall mean the **conceptual and preliminary designs for the Project submitted to and approved by the ROP/DOTC prior to the date hereof and as set out in the Technical Documents**;
- j. "BGTOM" shall mean the build-gradual transfer-operate-maintain and manage contractual arrangement, as described in Section 6 hereof;
- k. "BOC" means the Bureau of Customs;
- l. "BOT Law" means Republic Act No. 6957 as amended by Republic Act No. 7718 and its Implementing Rules and Regulations;
- m. "BIR" means the Bureau of Internal Revenue;
- n. "BSP" means the Bangko Sentral ng Pilipinas;

- o. "Certificate of Final Completion" shall mean the Certificate of Final Completion referred to in Section 13.5 hereof;
- p. "Certificate of Substantial Completion" shall mean the Certificate of Substantial Completion referred to in Section 13.3 hereof;
- q. "Certificate of Transfer of Ownership" shall mean the Certificate of Transfer of Ownership referred to in Section 6.2 hereof;
- r. "Change in Law" means any amendment, modification, change, deletion or addition to, or precedential change in the interpretation of, any Applicable Law of any Philippine Governmental Authority, or the enactment or issuance of any new Applicable Law by any Philippine Governmental Authority, the imposition of conditions or requirements for any Permit requiring a change in the Scope of Work, or any other change in the specified standards or objective criteria of any Permit, in each case occurring after the date hereof and which has an adverse effect on the ULC's ability to perform any of its obligations under this Agreement or which causes an increase in the cost of such performance;
- s. "Civil Works" shall collectively refer to all civil, structural and architectural works of the Project as described in the Technical Documents;
- t. "Commencement of Site Works" refers to the start of Site Works;
- u. "Concession Period" means the twenty five (25) year period, subject to the extensions as may be provided for under this Agreement and by law, commencing from the day immediately after the issuance of the Certificate of Substantial Completion;
- v. "Condition Precedent Fulfillment Date" means the date on which all the conditions precedents listed in Section 26.2 hereof have been fulfilled;
- w. "Construction Period" means the period from the date of the Commencement of Site Works until the date of issuance of the Certificate of Final Completion;
- x. "Cooperation Period" means the period covering the Construction Period and the Concession Period;
- y. "Day" or "days" refer to calendar days;

- z. "Depot" shall mean the Depot referred to in Section 3.5 hereof and described in the Technical Documents;
- aa. "Detailed Engineering Design" means the detailed engineering design, plans and drawings for each component of the Project, or any part thereof, to be approved by the ROP/DOTC in accordance with Section 9.1 hereof and to be incorporated in the Technical Documents;
- bb. "Development Cost" shall have the same meaning as used and referred to in Section 26.3 hereof;
- cc. "Dispute Resolution" shall mean the alternative dispute resolution mechanism or procedure provided in Section 23;
- dd. "DOF" shall mean the Department of Finance;
- ee. "DOF Performance Undertaking" shall mean the credit enhancement granted by the ROP to the ULC in support of the Project pursuant to the Implementing Rules and Regulations of RA 6957, as amended by RA 7718, whereby the ROP, through the DOF, absolutely and irrevocably guarantees the performance by the ROP/DOTC of its obligation to pay the Amortization Payments and its other obligations under the Agreement, substantially in the form attached as Annex "A" hereof;
- ff. "DOTC" means the Department of Transportation and Communications;
- gg. "DOTC Authorizations" means all Permits that are specifically within the authority or jurisdiction of the DOTC, as well as other Governmental Authority within DOTC's administrative control or supervision, to issue or authorize;
- hh. "DTI" means the Department of Trade and Industry;
- ii. "Drawings" means all preliminary and conceptual drawings and all future detailed design drawings to be incorporated in the Technical Documents;
- jj. "EDSA" means Epifanio delos Santos Avenue;
- kk. "E&M Systems" are the electrical and mechanical systems for the Project as referred to in the Technical Documents and includes, among others, rolling stock, signaling, telecommunications, power supply, automatic fare collection, depot equipment, operation control center, closed-circuit televisions and other security system equipment, supervisory control and data acquisition (SCADA) and third rail;

- ll. "Engineering Consultant" means the engineering specialist or consultant that the **ROP/DOTC** may engage, to assist, advise or act on its behalf in the exercise of **ROP/DOTC**'s authority to provide technical supervision and observe the commissioning and testing as provided in Sections 10.3 and 13.7 hereof;
- mm. "EPC Contract" means the contract that may be entered into by the **ULC** and any contractor to undertake the EPC works as authorized under Section 9.10 of this Agreement;
- nn. "EPC Works" shall refer to the Engineering Procurement Construction Works for the design, procurement, construction, installation, commissioning and testing of the Project;
- oo. "Escrow Agreement" shall refer to the agreement to be entered into by the Parties and the Agent Bank designated as escrow agent, to establish the Passenger Revenue Account having the terms listed in Annex "B" hereof;
- pp. "Extraordinary Price Adjustment" shall have the same meaning as used and referred to in Section 16.4 hereof;
- qq. "Facility Operator" shall mean **ULCOM Company, Inc.**, a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, at least sixty percent (60%) of the capital stock of which is Filipino-owned;
- rr. "Fare Differential" shall have the same meaning as used and referred to in Section 16.4 hereof;
- ss. "Final Notice" shall have the same meaning as used and referred to in Section 25.1 hereof;
- tt. "Financing Agreements" means any agreement and other related instruments, security documents, direct agreements and other ancillary undertakings, which make available to the **ULC** credit facilities or other funds for the Project;
- uu. "Financial Closure" means the date on which the Financing Agreements have been signed;
- vv. "Force Majeure" shall have the same meaning as used and referred to in Section 21.1 hereof;
- ww. "Governmental Authority" shall mean any government, governmental department, ministry, commission, board, bureau, agency, regulatory authority, instrumentality, judicial, legislative or administrative body, national, provincial or local, having

jurisdiction over the Project, this Agreement, or any other transaction or event contemplated hereunder;

- xx. "GSIS" means the Government Service Insurance System;
- yy. "Gross Passenger Revenues" shall have the same meaning as used and referred to the Section 7.3 hereof;
- zz. "Grounds for Extraordinary Price Adjustment" shall have the same meaning as used and referred to in Section 16.3 hereof;
- aaa. "Hazardous Substances" means any pollutants, dangerous chemical or biological substances, hazardous materials, hazardous wastes, hazardous constituents, or hazardous or toxic substances, defined or regulated as such under any Applicable Law or otherwise generally considered to be such a thing, including, without limitation, petroleum products (including, without limitation, crude oil or any fraction thereof), and polychlorinated biphenyls;
- bbb. "Highway" shall mean the Highway referred to in Section 3.2 hereof and described in the Technical Documents;
- ccc. "Highway Alignment" shall have the same meaning as used and referred to in Section 3.2 hereof;
- ddd. "IC" means the Insurance Commission;
- eee. "ICC" means the Investment Coordination Committee;
- fff. "Incident" shall have the same meaning as used and referred to in Section 4.2 hereof;
- ggg. "Inspection Firm" shall have the same meaning as used and referred to in Section 8.5 hereof;
- hhh. "Intent Notice" shall have the same meaning as used and referred to in Section 25.2 hereof;
- iii. "Intercreditor Agent" shall mean the authorized representative(s) and/or agent(s) appointed by the lenders and investors to act and negotiate on their behalf and distribute the Amortization Payments in accordance with this Agreement;
- jjj. "Intermodal Transportation Terminal" or "ITT" shall mean the ITT referred to in Section 3.3 hereof and described in the Technical Documents;
- kkk. "Items of Archeological Interest" means fossils, coins, articles of

value or antiquity, or structures and other things of geological or archaeological interest;

- lll. "Land Acquisition Plan" shall have the same meaning as used and referred to in Section 20.2 hereof;
- mmm. "LTFRB" means the Land Transportation Franchising and Regulatory Board;
- nnn. "Maintain" means to provide Maintenance for the MRTS;
- ooo. "Maintenance" means the upkeep and repair of the MRTS necessary or required for its safe and proper operation including the provision of spare parts, tools and equipment, labor, supervision in accordance with international standards and practices;
- ppp. "Maintenance Provider" shall have the same meaning as used and referred to in Section 9.11 hereof;
- qqq. "Material Breach" shall have the meaning referred to in Section 4.2.2 hereof;
- rrr. "MRTS" or "Metro Rail Transit System" shall mean the MRTS referred to in Section 3.4 hereof and described in the Technical Documents;
- sss. "Milestones" are the stages of the Project as identified and set forth in Section 4.1 hereof and detailed in the Work Schedule;
- ttt. "MMDA" means the Metro Manila Development Authority;
- uuu. "MRT Line 3" or "MRT 3" is the Metro Rail Transit System along Epifanio delos Santos Avenue (EDSA) from Taft Avenue, Pasay City to North Avenue, Quezon City;
- vvv. "MRTS Alignment" shall have the same meaning as used and referred to in Section 3.4 hereof;
- www. "NEDA" shall mean the National Economic and Development Authority;
- xxx. "Net Revenues" refer to the amount that remains after the O&M Costs, insurance, banking fees and charges, and unified collection system fees, if any, have been deducted from the Gross Passenger Revenues;
- yyy. "OIC" means the Omnibus Investments Code;

- zzz. "O&M" shall mean Operation and Maintenance;
- aaaa. "O&M Costs" shall mean all costs necessary or incidental to, or arising out of, O&M, including insurance, bank charges and taxes;
- bbbb. "Operate" means to provide Operation for the MRTS;
- cccc. "Operation" means the day to day administration and management of the MRTS to ensure the safe and efficient conveyance of passengers from station of origin to station of destination to include, among others, planning, management and administration of the deployment of Rolling Stock, fare collection, station facilities, Depot, and the employment and supervision of manpower;
- dddd. "Party" or "Parties" refers to the ULC or the ROP/DOTC individually or collectively, as may be applicable;
- eeee. "Passenger Revenue Account" shall have the same meaning as used and referred to in Section 7.2 hereof;
- ffff. "Performance Security for Construction" shall mean the Performance Security for Construction referred to in Section 5.1 hereof;
- gggg. "Performance Security for O&M" shall mean the Performance Security for O&M referred to in Section 5.2 hereof;
- hhhh. "Performance Standards" means the performance specifications for the MRTS as set forth in the Technical Documents;
- iiii. "Permits" means all national and local licenses, permits, franchises, authorizations and other approvals of Governmental Authorities, including but not limited to environmental, building, occupancy, visas and work permits, and any agreement, consent, authorization or approval from or with any person, required by Applicable Law or otherwise necessary for the Project and includes DOTC Authorizations unless the context clearly indicates otherwise;
- jjjj. "Person" means an individual, corporation, partnership, association, trust, or any other entity or organization, including, without limitation, a Governmental Authority;
- kkkk. "Project" shall have the same meaning as used and referred to in Section 3.1 hereof, and is otherwise known as the MRT Line 7;
- llll. "Project Completion Date" is the date when the ULC duly

receives from the ROP/DOTC the Certificate of Substantial Completion of the Project pursuant to Section 13.3 hereof;

- mmmm. "Project Completion Target Date" is the date the ULC is scheduled to attain the Completion of the Project as shown in Section 3 of the Technical Documents, which shall not be later than the last day of the Forty Second (42nd) month from the effectivity of this Agreement or as extended in accordance with this Agreement;
- nnnn. "Project Cost" shall have the same meaning as used and referred to in Section 8.1 hereof, or as may be authorized to be adjusted in accordance with this Agreement;
- oooo. "Project Site" shall have the same meaning as used and referred to in Section 3.7 hereof;
- pppp. "ULC Revenue Share" refers to the percentage share of the ULC in the Net Revenues as specified in Section 7.4 hereof;
- qqqq. "Qualified Replacement Entity" shall have the same meaning as used and referred to in Section 25.1 hereof;
- rrrr. "Representative" means with respect to a Person, any representative, director, officer, employee, or agent of such Person;
- ssss. "Required Land" shall mean the areas in the Right of Way belonging to third parties which are to be identified and acquired from third parties by the ROP/DOTC and delivered and made available to the ULC in accordance with the Land Acquisition Plan for the Project;
- tttt. "Right of Way" or "ROW" means the areas of the Project Site, including those for the MRTS, the Highway and the road leading to the Depot and the ITT to be delivered and made available to the ULC (i) in its entirety; (ii) in a condition which enables the ULC to have continuing or uninterrupted possession, use and enjoyment up to the end of the Concession Period; (iii) with unrestricted passage over or under and of access to and egress from said Right of Way; (iv) without any utilities or other obstruction or any man-made obstacles which may include but not limited to any form of severe pollution, or other extreme environmental hazard or Hazardous Substances located therein; and (v) completely free of any claims, squatters and/or encumbrances;
- uuuu. "Rolling Stock" shall refer to the rolling stock described in the Technical Documents;

- vvvv. "ROP/DOTC Account" shall refer to the escrow account to be established by ROP/DOTC wherein the ROP/DOTC Revenue Share and the income of the ROP/DOTC from other sources in the Project will be deposited and thereafter primarily disbursed to service the obligations of the ROP/DOTC to the ULC under and in accordance with this Agreement;
- www. "ROP/DOTC Revenue Share" refers to the percentage share of the ROP/DOTC in the Net Revenues as specified in Section 7.4 hereof;
- xxxx. "Scope of Work" shall refer to the EPC Works to be undertaken by the ULC as described in Annex "C" hereof and the Technical Documents;
- yyyy. "Schedule of Payment" means the schedule of payment of the Amortization Payments as shown in Annex "D" hereof;
- zzzz. "Site Survey" means the Site Survey described in the Technical Documents;
- aaaa. "Site Works" means actual construction activities including mobilization works on the Project Site;
- bbbb. "Swiss Challenge" means the phase prescribed under the BOT Law whereby comparative or competitive proposals are solicited after an unsolicited proposal is submitted;
- cccc. "Tax Code" shall mean the National Internal Revenue Code of 1997;
- dddd. "Technical Documents" refers to the Scope of Works, Basic Design, Detailed Engineering Design, Commissioning and Testing Criteria, Performance Standards and Drawings set forth or to be included in Annex "E" hereof, as the same may be from time to time amended, modified or supplemented by the Parties consistent with this Agreement;
- eeee. "Termination Intent Notice" shall have the same meaning as used and referred to in Section 25.1 hereof;
- ffff. "Variation" shall have the same meaning as used and referred to in Section 12.1 hereof;
- gggg. "Variation Order" means the order issued by either of the parties to effect any Variation pursuant to Section 12.1 hereof; and
- hhhh. "Work Schedule" indicates how the EPC Works is expected to

proceed beginning from availability of the Project Site, (the Required Land and the Right of Way) for work to commence and progress, and including arrangements to be made with utility companies, and with Governmental Authorities involved in traffic and traffic rerouting and other necessary activities in relation to the Project, which shall be finalized within six (6) months from Condition Precedent Fulfillment Date.

Section 2. GRANT OF RIGHT

2.1 ROP/DOTC hereby grants the ULC the following rights:

- a. to finance, design, construct, supply, complete and commission the Project;
- b. to designate a Facility Operator and/or a Maintenance Provider to Operate and Maintain the Project;
- c. to receive the Amortization Payments and the ULC Revenue Share as specified in this Agreement;
- d. to charge and collect the Agreed Fares or the Actual Fares and/or to receive the Fare Differential, if any;
- e. Development Rights as specified in Section 15 hereof; and
- f. to do any and all acts which are proper, necessary or incidental to the exercise of any of the above rights and the performance of its obligations under this Agreement.

Section 3. THE PROJECT

3.1. General Description. The Project involves the financing, design, construction, testing, commissioning, and O&M of an integrated transportation system consisting of the following components, which shall be designed and constructed in accordance with the Technical Documents:

- a. The Highway;
- b. The Intermodal Transportation Terminal (ITT); and
- c. The Metro Rail Transit System (MRTS), including the Depot and Rolling Stock.

3.2. The Highway. The Highway shall be an open road consisting of at least six (6) lanes from the Bocaue interchange of the North Luzon Expressway to the ITT. The Highway is approximately twenty-two (22) kilometers long and shall be built along the road alignment indicated in

the Technical Documents (the "Highway Alignment").

- 3.3. **Intermodal Transportation Terminal.** The ITT shall be built adjacent to the terminal MRTS station. The facility shall be integrated with and serve as a transport terminal consisting of bus bays capable of accommodating sixty (60) buses at a given time, complete with passenger waiting areas, lounges, ticket booths, toilet facilities, among others in accordance with the Technical Documents.
- 3.4. **Metro Rail Transit System.** The MRTS shall consist of approximately 22-kilometer rail transit system, with fourteen (14) strategically-located stations, which shall be built from the North Avenue station in EDSA, Quezon City passing through Commonwealth Avenue, Regalado Avenue, Quirino Highway up to San Jose del Monte, Bulacan, along the MRTS alignment indicated in the Technical Documents (the "MRTS Alignment"). The MRTS shall include the E&M Systems and the Civil Works for the Depot, the guideway and the stations in accordance with the Technical Documents. The MRTS shall include a joint station with MRT Line 3 along EDSA and the extension of the MRT Line 3 guideway by approximately Six Hundred (600) meters to the said joint station as described in the Technical Documents.

The MRTS shall have an initial peak-hour capacity of approximately Twenty-Eight Thousand (28,000) passengers per hour per direction computed at seven and 6/10 (7.6) standees per square meter. However, the MRTS' structural design shall be able to accommodate an ultimate peak-hour capacity of approximately Thirty-Eight Thousand (38,000) passengers per hour per direction computed at seven and 6/10 (7.6) standees per square meter, subject to the addition of sufficient Rolling Stock, power supply and fare collection system. It is understood, however, that the addition of Rolling Stock, power supply and fare collection system is currently not part of Project Cost.

- 3.5. **Depot.** The Depot shall house the administrative offices and welfare facilities, as well as the maintenance area, warehouse and stabling facilities of the Rolling Stock and shall be designed and constructed in accordance with the Technical Documents.
- 3.6. **Rolling Stock.** The Rolling Stock will be multiple bogie units with air conditioning, radio communication and public address system and shall be constructed and equipped in accordance with the Technical Documents.
- 3.7. **Project Site.** In undertaking the Project, the ULC shall render Site Works at the following areas/sites (the "Project Site"):
- a. A strip along or in the center of the MRTS Alignment at least Ten and 50/100 (10.5) meters wide, including the area for a tunnel to be built underneath the Quezon Memorial Circle, as

well as the areas for stabling tracks and turnaround facilities at or around the MRTS Alignment as may be identified by the ULC;

- b. The air space above the road where the MRTS will be located;
- c. The area required for the Depot access line;
- d. All the areas required for the Highway along the Highway Alignment;
- e. All the intersections along the MRTS Alignment and Highway Alignment for bridges and overpasses;
- f. The areas where the ITT, stations, substations, passenger overpasses, Depot and related facilities of the MRTS will be constructed; and
- g. All the areas adjacent to or immediately surrounding the above-mentioned sites and other areas reasonably necessary in order to undertake the Project in an efficient and orderly manner as contemplated under this Agreement as identified in Annex "F".

Section 4. WORK SCHEDULE

- 4.1. **Milestones.** The Parties shall work together in order to achieve the timely completion of the Project in accordance with the following timetable of Milestones which shall be further defined and detailed in the Work Schedule:

<u>MILESTONES</u>	<u>Target Dates from Effectivity of Agreement</u>
Commencement of Site Works	6 months
Delivery on Site of First Batch of Rolling Stock	24 months
First Trial Run	39 months
Project Completion Target Date	42 months

- 4.2. **Extensions.** If any Incident is responsible for causing a delay in any stage of construction or supply of the Project, the Project Completion Target Date shall be extended by a reasonable period of time commensurate with the effect of such Incident and the Work Schedule shall be correspondingly adjusted in accordance with the procedure provided in Section 12 hereof.

The extension shall be for a reasonable period of time commensurate with the effect of such Incident and the Work Schedule shall be correspondingly adjusted in accordance with the procedure provided in Section 12 hereof.

4.2.1 For the purposes of this Agreement, the term "Incident" shall mean any of the following:

- a. a change in design or scope of work requested by **ROP/DOTC** which does not arise from the fault or negligence of the **ULC**;
- b. Force Majeure subject to Section 21.3 hereof;
- c. failure by the **ROP/DOTC** to perform any of its obligations under this Agreement;
- d. a Change in Law of which the **ULC** has notified the **ROP/DOTC** in writing within fifteen (15) days after the **ULC**'s knowledge of the Change in Law;
- e. failure to obtain any Permit that is the responsibility of **ROP/DOTC** on or before the date, if any, specified in the Work Schedule for obtaining such Permit;
- f. the negligent acts or omissions or intentional or willful misconduct of the **ROP/DOTC**, Governmental Authority, or any of its agencies or Representatives, including any of their affiliates or their affiliates' other contractors or Representatives;
- g. any delay or increase in cost arising from matters within the control of the **ROP/DOTC** or any of its agencies or Representatives, including, the failure of DOTC, or any other Governmental Authority or any of their Representative or **ROP/DOTC** contractors to timely perform its or their work related to the Project or to timely permit the **ULC** to perform the EPC Works, not including any action by any such other Governmental Authority relating to enforcement of existing Applicable Laws regarding health, safety or the like;
- h. the encountering of Items of Archaeological Interest or Hazardous Substances at the Project Site;
- i. the failure of **ROP/DOTC** to provide peaceful possession and use of and necessary access to the Project Site, the Required Land and the Right of Way or do such acts that would prevent the **ULC** to maintain such possession, use and access in accordance with Section 20.2;
- j. the failure of **ROP/DOTC** to comply with its obligations under Section 20; and/or

k. any Material Breach by the ROP/DOTC.

4.2.2 For the purposes of this Agreement, "Material Breach" shall mean breach of the following obligations:

- a. Grant of right to the ULC in accordance with Section 2.1;
- b. Payment of Amortization Payments in accordance with Section 6.2;
- c. Issuance, securing or procurement of all DOTC Authorizations and exerting all efforts in order to assist the ULC in obtaining the necessary Permits from other pertinent Governmental Authorities within the period specified in the detailed work schedule in accordance with Section 9.8;
- d. Implementation of the Agreed Fares specified in Section 16;
- e. Establishment and maintenance of a Project Management Office for the Project and the designation of qualified personnel thereto in accordance with Section 20.1 (a);
- f. Providing the ULC with peaceful possession and use of, and unrestricted access to, as well as quiet enjoyment of, and sufficient title to, the Project Site in accordance with Section 20.1 b);
- g. Relocation of any utilities in accordance with Section 20.1 (c);
- h. Assisting the ULC in ensuring that power is continuously supplied to the MRTS in accordance with Section 20.1 (d);
- i. Interconnection of the MRTS with MRT Line 3, as well as the establishment of the joint station;
- j. Arrangement of all traffic rerouting and other traffic management measures in accordance with the Work Schedule pursuant to Section 20.1 (h);
- k. Responding to all submissions and requests from the ULC for its approval or consent within fifteen (15) days from receipt of such requests in accordance with Section 20.1 (i); and

1. Assisting the ULC in promoting the use of the MRT Line 7 to the general public in accordance with Section 20.5.
- 4.3. **Liquidated Damages.** In the event that the Project is not completed by the end of the grace period, which is one hundred (100) calendar days following the Project Completion Target Date, the ULC shall pay the ROP/DOTC liquidated damages in the amount of One Hundred Thousand United States Dollars (US\$100,000.00) for every calendar day of delay starting from the date following the Project Completion Target Date, but which shall not exceed two hundred fifty five (255) calendar days. Any liquidated damages due may be drawn against the Performance Security for Construction. Should the delay exceed two hundred fifty five (255) calendar days plus any extension thereof duly granted, if any (without additional damages), the ROP/DOTC may declare the ULC in default and forfeit the remaining Performance Security for Construction posted by the ULC pursuant to Section 5.1 hereof less the aggregate of all the other amounts paid by the ULC pursuant to the immediately preceding sentence. The liquidated damages referred to herein shall be deducted from whatever the ULC may receive pursuant to the termination provisions of this Agreement. Except as provided herein, the ULC shall have no other liability or obligation in respect of a failure to complete the Project. Any dispute between the ROP/DOTC and the ULC relating to the propriety or the amount of liquidated damages shall be resolved in accordance with Section 23 hereof.

Section 5. PERFORMANCE SECURITIES

- 5.1. **Performance Security for Construction.** Within five (5) days from Condition Precedent Fulfillment Date, the ULC shall post in favor of the ROP/DOTC a performance security for construction in the form of a security bond or any other security acceptable under Section 12.7 of the Implementing Rules and Regulations of the BOT Law, to guarantee the faithful performance by the ULC of its obligations under this Agreement, in particular the timely prosecution of the EPC Works for construction ("Performance Security for Construction") in accordance with the Milestones, provided however, that the ULC shall be allowed to submit a catch-up implementation plan subject to the approval of the ROP/DOTC. The ULC shall distribute the Performance Security for Construction to cover and apply to each of the Milestones so that a portion of the said Performance Security shall be released upon compliance with the corresponding Milestone; provided that the full balance of the Performance Security for Construction shall be released upon the issuance by the ROP/DOTC of the Certificate of Final Completion.
- 5.2. **Performance Security for O&M.** To guarantee the faithful performance of its O&M obligations under the Agreement, the ULC, Facility Operator and/or the Maintenance Provider shall post in favor of

the ROP/DOTC a surety bond or such other securities acceptable to both parties for O&M upon the issuance of the Certificate of Substantial Completion in the amount of One Million United States Dollars (\$1,000,000.00) ("Performance Security for O&M"). The amount of Performance Security for O&M shall be reduced every year of the Concession Period to the amounts as specified in Annex "G". ROP/DOTC may draw against the Performance Security for O&M only if the ULC materially fails to comply with the requisite performance standards in the Technical Documents for a period longer than ninety (90) days.

- 5.3. Performance Undertaking by ROP/DOTC. The ROP/DOTC shall secure, within thirty (30) days from the date of this Agreement, the DOF Performance Undertaking.

Section 6. THE BUILD, GRADUAL TRANSFER, OPERATE, MAINTAIN AND MANAGE ARRANGEMENT

- 6.1. Principal Undertakings of ULC. The ULC shall:

- a. Finance the Project;
- b. Design and construct the Civil Works;
- c. Design, supply and install the required E&M Systems, and maintenance equipment for the Project;
- d. Commission and test the Project;
- e. Gradually transfer ownership of the Project to the ROP/DOTC in accordance with the terms hereof; and
- f. Operate, Maintain and Manage the Project through the Facility Operator and/or the Maintenance Provider, as specified in this Agreement.

- 6.2. Amortization Payment. As payment for the gradual transfer of ownership of the assets of the Project by the ULC during the Concession Period, the ROP/DOTC shall pay the ULC fixed Amortization Payment on a semi-annual basis in accordance with the Schedule of Payment. For every semi-annual full payment made by the ROP/DOTC, and actually received by the ULC, the latter shall issue a Certificate of Transfer of Ownership (Annex "H" hereof), in favor of the former representing a pro-indiviso interest in the assets of the Project in proportion to the Amortization Payment made over the total Amortization Payment to be made during the Concession Period. After the end of the Concession Period but provided that all the Amortization Payment and other amounts due to the ULC under this Agreement shall have been fully paid, settled and otherwise received by the ULC, full

ownership of the assets of the Project shall be transferred to it, free from all liens and encumbrances.

- 6.3 **Share in Passenger Revenues.** ROP/DOTC shall be entitled to a percentage share in the passenger revenues as provided under Section 7.4.

3.4
contemplates
Net Revenues

- 6.4. **When Effected.** At the end of the Concession Period and after the ULC shall have received from the ROP/DOTC full payment of all Amortization Payments and all other amounts payable by the ROP/DOTC pursuant to this Agreement, the ULC shall transfer to the ROP/DOTC, free from any lien or encumbrance created by the ULC or existing as a result of the ULC's actions, all its title to, and rights and interest in the Project.

- 6.5. **Mechanics of Transfer.** At least twelve (12) months prior to the end of the Concession Period, ROP/DOTC and the ULC shall agree on the mechanics of the transfer, including the training of the personnel of the ROP/DOTC for the latter's eventual take-over of the Project, provided, however, that the ULC shall ensure that the MRTS, including all equipment and facilities, and all inventories transferred pursuant to this Agreement shall meet the standards provided in the O&M and/or manufacturer's manuals as of the time of the turn-over. The ULC shall subrogate or assign to ROP/DOTC any and all rights and benefits with respect thereto which it is able to subrogate or assign on any unexpired warranties in respect of the Project, including those for the Rolling Stock and E&M Systems.

- 6.6. **Who Bears Cost.** The ROP/DOTC shall be responsible for all costs and expenses incurred in connection with the transfer referred to in Sections 6.4 and 6.5 hereof and shall at its own cost obtain or effect all Governmental Approvals and other approvals and take such other action as may be necessary for transfer pursuant to this Section. These costs and expenses shall include:

- a) legal fees;
- b) all taxes, if any; and
- c) fees charged by government agencies.

- 6.7 **Rate of Return.** All rail-based revenues above eleven and 90/100 percent (11.90%) internal rate of return of the ULC for the Project over the Cooperation Period shall be shared by the Parties equally at the end of the Concession Period, provided however, that all rail-based revenues above fourteen percent (14%) internal rate of return shall wholly accrue to the ROP/DOTC.

Section 7. PROJECT RELATED ACCOUNTS

7.1. **Amortization Payment Account.** All Amortization Payment payments due and payable shall, when they become due and payable be directly and automatically deposited by **ROP/DOTC** in an account to be established in such banks and in such locations to be designated by the **ULC** ("Amortization Payment Account").

7.2. **Passenger Revenue Account.** The **ULC** shall, within forty-two (42) months from the date hereof, open or establish the Passenger Revenue Account, which shall be an escrow account with the Agent Bank acceptable to **ROP/DOTC**, to exclusively receive all passenger revenues collected by the Facility Operator from the imposition of the Actual Fare from passengers.

All passenger revenues collected by the Facility Operator from managing and operating the MRTS shall be directly deposited to the Agent Bank by the Facility Operator every day that the MRTS is commercially operating until the end of the Concession Period.

7.3. **Gross Passenger Revenue.** All deposits in the Passenger Revenue Account shall exclusively comprise the Gross Passenger Revenue. The Gross Passenger Revenue shall be distributed or applied pursuant to the Escrow Agreement in accordance with the following priority in order to determine the Net Revenue:

First — deduction of any amounts payable to other operators under a unified ticketing or fare collection system, if any

Second — deduction of the O&M Costs

7.4. **Net Revenue Sharing.** The Parties agree that **ROP/DOTC** shall have a share in the Net Revenue beginning on the first year of the Concession Period. The Net Revenue, if any, beginning on the first year of the Concession Period, shall be divided and shared by the **ROP/DOTC** and the **ULC** as follows:

ROP/DOTC : 30% (the "ROP/DOTC Revenue Share")

ULC : 70% (the "ULC Revenue Share")

For this purpose, the Escrow Agreement shall likewise specify that upon the deduction of the First and Second amounts referred to in Section 7.3 above, the Agent Bank shall determine, divide and distribute the **ROP/DOTC** Revenue Share and the **ULC** Revenue Share and deposit the same to their respective accounts specified in Sections 7.5 and 7.6.

7.5. **ROP/DOTC Account.** The **ROP/DOTC** shall establish a specified trust

account in the Landbank of the Philippines or any other government depository bank that shall be exclusively devoted to receiving the ROP/DOTC Revenue Share, and the ROP/DOTC's share of the proceeds from the exercise by the ULC of its Development Rights in accordance with Section 15 hereof (if any), its share from the upside from other developments in accordance with Section 15 hereof (if any), any incremental income from the increase in the Agreed Fare pursuant to Section 16.2 and all other proceeds, income or revenue it may receive from the Project; Provided, however, that all proceeds, income or revenue in the ROP/DOTC Account shall be disbursed or utilized exclusively to defray or cover all of ROP/DOTC's obligations to the ULC under this Agreement until the end of the Concession Period.

- 7.6. **ULC Account.** The ULC may establish such accounts with such banks and in such locations as it may deem necessary or desirable in order to receive the ULC Revenue Share, the compensation referred to in Section 16.2, or the Fare Differential payable by ROP/DOTC to the Facility Operator pursuant to or in accordance with Section 16.4 of this Agreement.

Section 8. PROJECT COST AND FINANCING

- 8.1. **Project Cost.** The total capital costs of the Project ("Project Cost") is as specified in Annex "T" hereof, and may not be adjusted except as otherwise allowed in accordance with this Agreement; Provided, that the Parametric Formula for Price Adjustment in Annex "T" shall only be applied after NEDA-ICC approval and subject to existing laws and regulations.

The Project Cost shall be financed by the ULC through debt and equity at a ratio of approximately 75/25 and in accordance with existing BSP regulations on foreign financing components, if any.

- 8.2. **Financing Agreements.** The ULC is authorized to enter into Financing Agreements as it may be deemed necessary and/or desirable to obtain financing for the Project; provided that the ROP/DOTC and the DOP shall be advised of the final terms and conditions of any Financing Arrangement before the ULC enters and executes the same but without any right to prevent the ULC from entering into the Financing Agreement.
- 8.3. **Financial Closure.** The ULC shall endeavor to achieve Financial Closure not later than eighteen (18) months from the signing of this Agreement.
- 8.4. **ROP/DOTC Related Costs.** The costs of the ROP/DOTC's technical supervision during the construction, the relocation of utilities, traffic management and the day-to-day operation of the Project Management Office, as well as a contingency budget, shall form part of Project Cost.

The ULC shall advance the said amounts to ROP/DOTC upon the timely submission by the ROP/DOTC of proper *pro forma* invoices duly signed by ROP/DOTC and concurred by the Department of Budget and Management, provided however, that all ROP/DOTC costs shall not exceed the amount allocated for ROP/DOTC related costs in the Project Cost. The Parties shall agree on the specific procedure for disbursement in consultation with budgetary authorities.

- 8.5 **Appointment and Duties of Inspection Firm.** The parties may appoint by mutual consent an independent and internationally accredited accounting and auditing firm (the "Inspection Firm") to determine, to the extent the Parties cannot agree thereupon, the adjustments and reimbursements referred to in Section 12, Section 16, 18.3, 20.3, and 21.1. The ULC will make available to the Inspection Firm (subject to the execution by the Inspection Firm of a confidentiality agreement substantially in the form attached hereto as Annex "J") the methodology and assumptions it uses in computing adjustments to Project Cost, the Amortization Payments and other reimbursements. The determination of such calculations by the Inspection Firm shall be final. The Parties hereto agree that the sole responsibility of the Inspection Firm shall be to make the determinations hereunder and that matters of interpretation of the terms and conditions of this Agreement shall not be within its scope of responsibility. The ULC and ROP/DOTC shall keep and at all reasonable times make available to the Inspection Firm books of accounts pertaining to the adjustments of the Project Cost and Amortization Payments and shall report such expenses and costs, and submit such receipts, vouchers and other documents, as are necessary to enable the Inspection Firm to perform its tasks. The fees of the Inspection Firm shall be borne equally by the Parties, provided that the share of ROP/DOTC shall be taken from DOTC-Related Cost.
- 8.6 **Compliance with the Requirements of the BSP – Monetary Board.** The ULC shall comply with all the existing requirements of the BSP – Monetary Board.

Section 9. DESIGN, CONSTRUCTION AND SUPPLY

- 9.1. **Detailed Engineering Designs.** The ULC shall prepare the Detailed Engineering Designs, consistent with the Basic Design, Drawings and Performance Standards in accordance with the Work Schedule and submit the same or any part thereof to the ROP/DOTC for its review and approval; provided that such approval shall in no case be unreasonably withheld by the ROP/DOTC and be subject to Section 20.1(i) hereof. The said approval does not diminish the responsibility of the ULC for the integrity of the Detailed Engineering Designs, nor does it transfer any part of such responsibility to the ROP/DOTC. The detailed engineering designs, plans and drawings, once approved, shall automatically form as an integral part of the Technical Documents and this Agreement.

- 9.2. **Title to Designs.** The ROP/DOTC acknowledges and confirms that the ownership over the Detailed Engineering Designs submitted by the ULC pursuant to the provisions of this Agreement remains with the ULC until the complete transfer of the assets of the Project to the ROP/DOTC. Upon the complete transfer of the assets of the Project to the ROP/DOTC, the ULC shall turn over and transfer to the ROP/DOTC without need of demand a complete set of the Detailed Engineering Designs, to the extent allowed by pertinent laws on intellectual property.
- 9.3. **Construction and Supply.** The ULC shall undertake the Civil Works, including the laying of tracks and the construction of the stations, the electric substations, the Depot and other facilities required and, supply and install the E&M Systems to complete the Project in accordance with the approved Technical Documents.
- 9.4. **Road Widening.** Where the MRTS Alignment shall require a wider width in accordance with the Site Survey, the ULC agrees, subject to the delivery of the Required Land and/or Right of Way, to widen the affected roads in accordance with the Detailed Engineering Designs.
- 9.5. **Reports.** The ULC shall also submit periodic monthly (financial and technical) reports to the ROP/DOTC regarding the status and progress of the construction of the Project. The ROP/DOTC shall verify the said periodic reports submitted by the ULC.
- 9.6. **Consultations.** The Parties shall convene and conduct weekly consultative meetings for the purpose of discussing and examining particular issues and concerns regarding the construction. However, either Party may request for special consultative meetings.
- 9.7. **Importation of Equipment.** The ULC shall be responsible for the importation and transportation of equipment to the Project Site.
- 9.8. **Permits.** The ROP/DOTC shall issue, secure or procure all DOTC Authorizations and exert all efforts and assist the ULC in obtaining the necessary Permits from other pertinent Governmental Authorities within the period specified in the detailed work schedule to be agreed upon by the Parties in order that the ULC may perform its obligations and in accordance with under this Agreement.
- 9.9. **Right to do all Things Necessary.** The ULC shall, to the extent permitted by Applicable Law, have the right to do all things necessary and desirable in order to complete the Project in accordance with the Work Schedule and perform its obligations under this Agreement.
- 9.10. **EPC Contractor.** The ULC may, as it is authorized by ROP/DOTC, designate or engage the services of contractors, including any or all of those listed in Annex "K" to undertake the EPC Works or any portion

thereof, [in accordance with the terms of the draft EPC Contract]; provided, however, that such designation or engagement shall not diminish the responsibility of the ULC for the proper development, construction, completion and commissioning of the Project as provided in this Agreement.

- 9.11. **Operation and Management Providers.** The ULC shall designate the Facility Operator to operate and/or maintain the MRTS, provided that the Facility Operator to be designated by the ULC is determined by the ROP/DOTC to be qualified to operate and/or maintain the MRTS in accordance with the Performance Standards. The ULC shall also have the option to designate a Maintenance Provider different and separate from the Facility Operator to maintain the MRTS. ROP/DOTC must first pre-qualify the Facility Operator and/or Maintenance Provider designated by the ULC, unless the Facility Operator or Maintenance Provider is a member of the ULC's consortium or a shareholder of the ULC, as the case may be.
- 9.12. **Subcontractors.** The ULC may engage the services of foreign and/or Filipino subcontractors, provided, however that the subcontractor is first pre-qualified by the ROP/DOTC. Moreover, the ULC shall, whenever possible, award or cause to be awarded subcontracts to Philippine contractors and suppliers, provided that in the opinion of the ULC, the quality, schedule of delivery, costs and reliability of said Philippine contractors and suppliers are, among others, competitive when compared with those of foreign contractors and suppliers. In this regard, the ULC shall not award any subcontracts to contractors and suppliers, Filipino or foreign, which are or have been blacklisted by any Governmental Authority.
- 9.13. **Replacement.** Notwithstanding Section 9.11, the ULC shall have the right to remove, replace or add to the Facility Operator or the Maintenance Provider, or the contractors or advisors as may be necessary for the immediate and successful implementation of the Project, subject to the concurrence of the ROP/DOTC, which shall not be unreasonably withheld. The ULC shall immediately advise the ROP/DOTC if and when the Facility Operator, the Maintenance Provider or any of the aforesaid contractors or advisors withdraws from the Project. In which case, the ULC shall, within sixty (60) days from said withdrawal, replace said contractor or advisor with another of similar or greater capability, experience and qualifications.
- 9.14. **Continuing Responsibility.** The non-performance, withdrawal, removal, replacement or exclusion of any of the aforesaid contractors and/or advisors shall not relieve the ULC of any of its obligations under this Agreement.

Section 10. TECHNICAL SUPERVISION BY ROP/DOTC

- 10.1. **Technical Supervision.** The ROP/DOTC shall exercise technical supervision over the Project. Accordingly, the ROP/DOTC shall monitor, inspect, evaluate and check the progress and quality of the activities and works undertaken or about to be undertaken by the ULC to ensure that the Project is designed, constructed and equipped in accordance with the approved Technical Documents. Such technical supervision by the ROP/DOTC shall not diminish the responsibility of the ULC for the proper construction of the Project, nor does it transfer any part of that responsibility to the ROP/DOTC.
- 10.2. **Deviations.** Should the ROP/DOTC find any deviation from, or non-compliance with, the approved Technical Documents, the ROP/DOTC shall serve written notice thereof to the ULC which shall have a period of fifteen (15) days from receipt of the written notice within which to communicate whether it agrees with the findings of the ROP/DOTC. If the ULC agrees with the findings of the ROP/DOTC, or fails to object thereto in writing within a period of fifteen (15) days from receipt of the written notice from the ROP/DOTC, the ULC shall correct the deviation or non-compliance referred to by the ROP/DOTC within a reasonable period to be agreed upon by the Parties at that time. Any disagreement between the ROP/DOTC and the ULC concerning such alleged deviation or non-compliance shall be subject to Dispute Resolution in accordance with Section 23 hereof.
- 10.3. **Engineering Consultant.** The ROP/DOTC, in exercising technical supervision over the Project activities of the ULC, may engage the services of a Filipino and/or foreign Engineering Consultant. The specific scope of duties and services of the Engineering Consultant as it relates to the EPC Works shall be as set out in Annex "L" hereof; Provided, however, that the Engineering Consultant shall not at any time be a competitor of the ULC or any other entity directly or indirectly competing or participating with the ULC and/or its major shareholders in regard to the Project or similar projects in the Philippines. Neither shall the Engineering Consultants have corporate ties or privileged business relationships with such competitor or competing entity. The Engineering Consultants shall also be bound not to disclose any documents or proprietary information relative to any part of the Project.
- 10.4. **Costs of Supervision.** Any and all reasonable costs incurred or will be incurred by the ROP/DOTC in providing or relating to the provision of the technical supervision over the Project as provided in Section 10.1, including the costs for engaging the Engineering Consultant, as approved by the Secretary of the ROP/DOTC in writing, shall be advanced by the ULC and remitted to the ROP/DOTC upon presentation of appropriate billing statements and invoices. The said cost advanced by the ULC shall form part of Project Cost and shall in no case exceed the budget therefor as indicated in Annex "T" hereof.
- 10.5. **Duration.** The ROP/DOTC may engage the services of the Engineering

Consultant until the issuance of the Certificate of Final Completion or such longer period as may be agreed upon by the Parties. In any event, **ROP/DOTC** on its own may terminate the engagement of the Engineering Consultant or any of its Representative for just cause. In case of termination, **ROP/DOTC** may engage a substitute Engineering Consultant subject to the same restrictions specified in Section 10.3 hereof.

Section 11. O&M BUDGET COMMITTEE

- 11.1. **Composition.** Prior to the Project Completion Date, the Parties shall create a management committee (the "O&M Budget Committee") composed of three (3) members, two (2) of whom shall be designated by each of the Parties (so that each Party shall have one representative,) while the third member shall be designated by the Parties jointly.
- 11.2. **Authority.** The authority of the O&M Budget Committee shall be limited to determining the appropriateness of the budget for O&M and Insurance during the Concession Period as recommended by the Facility Operator, provided however, that the items in the budget to be considered in the O&M Costs must include the items in Section 1.2(aaaa.).
- 11.3. **Replacement/Alternate Members.** Each Party may at any time replace any of its designated members to the O&M Budget Committee and shall so notify the other Party in writing of such replacement. Each may likewise at any time authorize a nominee to act as alternate member of the O&M Budget Committee in the absence of any regular member, and such alternate shall be deemed to officially represent the Party in the decisions taken at any meetings.
- 11.4. **Formulation of Policies.** Within fifteen (15) days from its formation, the O&M Budget Committee shall formulate its own guidelines delineating the specific roles/responsibilities, and the process to be followed, in the performance of its duties.
- 11.5. **Meetings.** Any of the representatives of the Parties in the O&M Budget Committee may call a meeting by giving notice of the proposed agenda, date, time and venue of the meeting to the other members at least seven (7) days prior to the proposed date of the meeting, unless such notice is waived by the other members. At the option of the members, meetings of the O&M Budget Committee may be done through telephone or video conferencing or other modes of electronic communication. The requesting member may designate the place, time and date of the meeting taking into account arrangements that are most convenient for all the members.
- 11.6. **Decisions.** All decisions of the O&M Budget Committee shall require the concurrence of the representatives of both Parties in the O&M

Budget Committee. However, should the representatives fail to concur, they shall seek the opinion and vote of the third member to break the tie. All decisions made at meetings of the O&M Budget Committee shall be binding on the Parties who shall be under obligation to support and carry out the same in good faith. The O&M Budget Committee may invite other persons to attend a meeting in an advisory capacity. However, such persons shall have no right to vote.

In case no decision on an issue is arrived at by the O&M Budget Committee, Section 23 (Dispute Resolution) of this Agreement shall apply.

- 11.7. **Minutes.** Minutes of the meetings of the O&M Budget Committee shall be taken and circulated to the members for signature. They shall be deemed approved if no request for correction is received in writing until the next meeting is adjourned.

Section 12. VARIATION

- 12.1. **Variations.** The Parties may agree to have Variation Orders issued in accordance with this section in the event of a Variation. A Variation means a change in the Project, which involves and makes necessary the alteration and modification of the quality or quantity of the works, the methodology by which the works are to be done as described in or referred to in the Technical Documents, or any adjustments to the Work Schedule, which shall include the addition, omission or substitution of any part of said works, the alteration of the kind or standard of any of the materials, equipment or system, or part thereof, to be used in the Project, and the removal from the Project Site of any work executed, or materials or goods brought thereto by the ULC or its contractors/subcontractors for the Project, provided that the Variation is within the general scope of the Project and that the cumulative amount of the Variation Orders do not exceed ten percent (10%) of the Project Cost. However, in exceptional cases where it is urgently necessary to complete the Variation, the Secretary of the DOTC may authorize the same even if it exceeds ten percent (10%), but not more than twenty percent (20%), of the Project Cost, subject to the guidelines to be determined by the NEDA-ICC; provided, however, that appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).
- 12.2. **ULC Requested Variations.** When conditions in the Project Site have so changed or been altered from the time of execution of this Agreement, without the fault or negligence of the ULC such that the Variation is necessary to adapt to or meet the actual conditions in the Project Site, or where there is a Change in Law such that the Variation is necessary to comply with the same, or where there has been an Incident or a delay in the Work Schedule not otherwise attributable to the fault of

the ULC, or where otherwise allowed in this Agreement, the ULC shall initiate and secure the concurrence of the ROP/DOTC for the issuance of a Variation Order, which concurrence shall not be unreasonably withheld.

The ULC shall prepare the work details and the cost estimates for the Variation and submit the same to the ROP/DOTC for its consideration. ROP/DOTC shall act on the ULC's request for a Variation Order within fifteen (15) days from receipt of the said request. Otherwise, the request shall be deemed granted and the ULC may proceed to implement the Variation requested.

- 12.3. **ROP/DOTC Requested Variations.** The ROP/DOTC may also request Variations by sending a notice to the ULC requesting for the preparation of the work details and the cost estimates for the Variations requested by the ROP/DOTC. Should the ULC have any objections to the ROP/DOTC's request for Variation, it shall communicate the same in writing to the ROP/DOTC within fifteen (15) days from receipt of the said notice. Otherwise, the ULC may be deemed to have waived any objections to the said request.
- 12.4. **Other Variations.** When Variations arising from the fault or negligence of the ULC are required, any of the Parties may initiate and secure the concurrence of the other Party for the issuance of a Variation Order, which concurrence shall not be unreasonably withheld, provided that any such Variation shall not be charged against the contingency budget and shall not result in an increase in the Project Cost or Amortization Payments.
- 12.5. **Cost of Variations.** Should there be an increase in cost resulting from any Variation Order under Section 12.2 and 12.3, such cost shall be charged against or credited to the ROP/DOTC contingency budget in the Project Cost. If the total cost of the Variations could not be covered by the contingency budget, a corresponding adjustment of the Amortization Payments shall be made, except for Variations arising out of the fault or negligence of the ULC. On the other hand, should there be a decrease in the Project Cost resulting from any Variation Order, the amount shall be added to the contingency budget in the Project Cost and held until the issuance of the Certificate of Substantial Completion. Any amounts left in the ROP/DOTC contingency budget shall be deducted from Project Cost and the appropriate adjustments in Amortization Payments will be made. Costs of implementing Variation Orders during the Concession Period shall be deemed as O&M Costs.
- 12.6. **Dispute of Variations.** Any disagreement or dispute with regard to requests for Variation shall be submitted to Dispute Resolution under Section 23 hereof.

Section 13. TESTING, COMMISSIONING AND COMPLETION

- 13.1. **Testing, Standards and Procedures.** To ensure that the Project complies with the prescribed Performance Standards, the ULC shall undertake tests, including commissioning tests, in accordance with the approved Commissioning and Testing Criteria set forth in the Technical Documents.
- 13.2. **When Conducted.** The ULC may, by giving the ROP/DOTC written notice therefor, request to conduct tests for the MRTS or any of its subsystems in accordance with the criteria and procedure set forth in the Technical Documents. However, when the ULC is of the opinion that the MRTS: (a) has accomplished ninety-five percent (95%) completion; (b) generally conforms to the approved Technical Documents; and (c) is capable of being operated commercially without compromising the safety of the riding public, the ULC shall give notice to ROP/DOTC that E&M System commissioning tests will be undertaken by the ULC within seven (7) days from ROP/DOTC's receipt of such notice. ROP/DOTC shall witness and verify compliance with the Technical Documents.
- 13.3. **Certificate of Substantial Completion.** In the event that the ROP/DOTC determines to its satisfaction after conducting said commissioning tests on the MRTS, that the conditions in the immediately preceding paragraph have been met, it shall within seven (7) days from successful commissioning tests, issue the Certificate of Substantial Completion, substantially in the form attached hereto as Annex "M", together with a punch list of all remaining works which the ULC shall proceed to effect as expeditiously as possible. The ULC shall have ninety (90) days, or such longer period agreed upon by the Parties, to comply with the punch list of all remaining works.
- 13.4. **Commencement of Concession Period.** The Concession Period is deemed to commence on the day immediately following the issuance of the Certificate of Substantial Completion, at which time the Facility Operator may commence commercial operations of the MRTS.
- 13.5. **Certificate of Final Completion.** Upon performance by the ULC of the remaining works on the punch list, which performance may be validated by the ROP/DOTC, the ROP/DOTC shall immediately issue the Certificate of Final Completion substantially in the form attached hereto as Annex "N". The ROP/DOTC shall also forthwith release to the ULC the Performance Security for Construction which the latter posted pursuant to Section 5.1 hereof.
- 13.6. **Partial Opening.** Notwithstanding Section 13.3, when the construction of the MRTS reaches such stage that it can be partially operated safely, the Parties, recognizing that early operation of the MRTS may be desirable, shall meet to discuss and determine the viability and feasibility of operating such portion of the MRTS. If the parties agree

that such operation is financially and economically viable and feasible, the parties shall negotiate in good faith the Amortization Payments to be paid for such portion for the period from the commencement of operation up to the issuance of the Certificate of Substantial Completion.

- 13.7. **Testing Representative.** The ROP/DOTC, or the Engineering Consultant if so directed by ROP/DOTC, shall witness the factory and commissioning tests, and issue the Certificate of Substantial and/or Certificate of Final Completion in accordance with Sections 13.3 and 13.5 respectively.

Section 14. OPERATION AND MAINTENANCE OR O&M

- 14.1. **Facility Operator.** The ROP/DOTC hereby authorizes the Facility Operator designated by the ULC, subject to the requirements of the Constitution and other existing laws, to operate and/or maintain any and all aspects of the Project throughout the Concession Period, and until all Amortization Payments are paid in full, in accordance with this Agreement. The Facility Operator is hereby deemed issued the requisite franchise to manage and/or operate and maintain the Project and the authority to collect the Actual Fares referred to in Section 16 hereof upon the effectivity of this Agreement, without need of any other Permit or authorization from the ROP/DOTC or any other Governmental Authority. The O&M Costs of the MRTS shall be charged to the Gross Passenger Revenues. The foregoing notwithstanding, the ULC (or the Facility Operator if also granted authority to maintain the MRTS) may, at their option, designate the Maintenance Provider to maintain the MRTS during the Concession Period.
- 14.2. **Operation Manual.** The Parties agree that the MRTS shall be managed and operated in accordance with an operation manual that shall embody the operating systems, standards, specifications, parameters, procedures, costing parameters, and organizational structures, which shall be prepared and submitted by the ULC to the ROP/DOTC for the latter's review and approval not later than twelve (12) months prior to the Project Completion Target Date, which approval shall not be unreasonably withheld.
- 14.3. **Maintenance Manual.** At least twelve (12) months from Project Completion Target Date, the ULC, the Facility Operator and/or Maintenance Provider (if separately designated) shall submit to the ROP/DOTC for its approval, the Maintenance manuals, standards, specifications, parameters, procedures and systems, and other relevant Maintenance information for the MRTS. The ULC shall also submit all amendments and supplements to the O&M manuals to ROP/DOTC for its approval, which approval shall not be unreasonably withheld.
- 14.4. **Technical Supervision.** The ROP/DOTC shall exercise technical supervision over the Operations and Maintenance of the MRTS and, in

pursuance thereof, shall check whether the same is operated in accordance with the approved operation and maintenance manuals. Costs for technical supervision do not form part of Project Cost and shall be borne by ROP/DOTC. Should the Facility Operator and/or the Maintenance Provider fail to operate or maintain the MRTS as required, the ROP/DOTC shall give written notice thereof to the ULC and Facility Operator and/or the Maintenance Provider, which shall have a period of fifteen (15) days from receipt of the written notice within which to communicate whether it agrees with the findings of the ROP/DOTC. If the Facility Operator and/or the Maintenance Provider agree with the findings of the ROP/DOTC, or fails to object thereto in writing within a period of fifteen (15) days from receipt of the written notice from the ROP/DOTC, the Facility Operator and/or the Maintenance Provider shall perform or comply its obligations in accordance with the approved Operations and/or Maintenance standards.

14.5. **Continuing Responsibility.** Technical supervision by the ROP/DOTC over the O&M of the MRTS by the ULC, the Facility Operator and/or the Maintenance Provider does not diminish ULC's responsibility for the same nor does it transfer any part of that responsibility to the ROP/DOTC.

14.6. **Training of ROP/DOTC Personnel.** The ULC shall provide the necessary training to DOTC personnel in the operation, use, maintenance and repair of the MRTS as specified in the Technical Specifications.

Section 15. DEVELOPMENT RIGHTS

15.1. **Grant of Right.** The ROP/DOTC hereby grants the ULC and acknowledges the ULC's exclusive and irrevocable commercial development rights, including the right to lease or sublease or assign interests in, and to collect and receive any and all income from, but not limited to, advertising, installation of cables, telephone lines, fiber optics or water mains, water lines and other business or commercial ventures or activities over all areas and aspects of the Project with commercial development potentials (collectively, the "Development Rights"), including, but not limited to, the following areas/activities:

Areas/Activities

- (a) Advertising in the MRTS, the ITT, and the Highway
- (b) Lease of space inside the ITT, the stations and the Depot
- (c) Lease of space above and under the MRTS, the ITT and the Highway
- (d) Income from properties in the Depot and the station in the ITT
- (e) Other income resulting from the Highway

15.2. **Reversion.** The exclusive and irrevocable Development Rights of the ULC over the areas and activities mentioned in the immediately

The said **ROP/DOTC** share shall be released only upon the completion of the annual audited financial statements by a reputable and independent auditing firm.

- 15.6. **Other Real Estate Developments.** The **ROP/DOTC** acknowledges that the **ULC** has caused the acquisition of approximately One Hundred Seventy Three (173) hectares of land [the "Subject Land" which is more specifically identified in Annex "O"], and intends to cause, through a qualified real estate entity or development company, the acquisition of additional real estate properties adjacent to the ITT and the Depot. For the avoidance of doubt, it is clarified that the Subject Land (which excludes the approximately 20 hectares of land allocated for the ITT and the Depot) and the developments to be undertaken thereon are not part of the Project. The **ULC**, however, in keeping with its representation with **ROP/DOTC** that it will cause the development of the Subject Land so that government may benefit from income and taxes that such development will generate, in order to support a "deficit neutral" fiscal position for the government, will cause either: (a) the contribution to the **ROP/DOTC** of twenty percent (20%) of the Subject Land to be developed or approximately thirty four and six tenths (34.6) hectares thereof; or (b) the participation of the **ROP/DOTC** in the net proceeds before tax, from the sale or lease of the Subject Land after its development (but less the cost of such development and whatever share the developer or joint venture partner may have), to the extent of 20% of such net proceeds. The **ULC** shall cause the development of the real estate which it has caused or will cause to be acquired in accordance with its commitments as specified below. The **ROP/DOTC** shall indicate in writing which option (as between (a) or (b) above) it shall take within three (3) months from the execution of this Agreement. All costs and expenses, including taxes, that may be incurred in the exercise of the **ROP/DOTC** of the option in item (a) or (b) above shall be for the exclusive account of the **ROP/DOTC**.

- 15.7 **Real Estate Development Commitments and Performance Bond.** The **ULC** undertakes, directly or indirectly, through qualified real estate and/or development entities, to develop the Subject Land and commit to deliver over a period of twenty (20) years starting from the year after commencement of the Concession Period, of an average of (i) Two Thousand Five Hundred (2,500) residential units per year (at an average floor area of forty (40) square meters per unit) or one hundred thousand (100,000) square meters of residential units per year; and (ii) Three Hundred (300) units of office space per year (at an average floor area of one hundred fifty (150) square meters per unit) or forty-five thousand (45,000) square meters of office space per year (the "Real Estate Development Commitments"). Actual development of the Subject Land, and the determination of compliance with the Real Estate Development Commitments, shall be done in phases, with each phase (the "Phase") consisting of three (3) years, save for the last Phase which shall consist of two (2) years of planned development. Upon effectivity

of this Agreement pursuant to Section 26.1 hereof, the ULC shall, directly or indirectly, post a performance bond for and upon the commencement of each Phase and shall be callable upon the failure of the ULC or the designated real estate and/or development entity to comply with the Real Estate Development Commitments for a given Phase, and after the curing period referred to in Section 15.8 below. The performance bond shall be a ten percent (10%) three (3)-year rolling performance bond on the Real Estate Development for a given Phase. The call amount will be proportional to the floor area of the unconstructed or uncompleted units over the floor area of the committed residential and office units multiplied by the amount of the bond.

The ULC may commence construction works pursuant to its Real Estate Development Commitments upon effectivity of this Agreement, and that all residential units and office spaces constructed shall be considered in determining compliance with the ULC's Real Estate Development Commitments for the first year, with the excess to be counted/credited to future years. All floor areas constructed in excess of the committed floor areas of residential and office units in any given year will be considered in determining compliance in subsequent years. Subject to confirmation of DOF, all residential and office units constructed and developed in the adjacent properties within a two (2) kilometer radius of the perimeter of the Subject Land [as shown in Drawing No. IM-03 of the Technical Documents (Annex "E" hereof)] starting from the effectivity of this Agreement pursuant to Section 26.1 hereof will be considered in the number of units constructed and completed for a given year.

- 15.8 Performance Undertaking on Real Estate Development.** In addition to the Performance Bond referred to in Section 15.7, the ULC shall undertake or covenant to accomplish its Real Estate Development Commitments as programmed in the Business Plan (Annex "P"). In the event that the ULC is unable to fulfill its Real Estate Development Commitments for a given year, the ROP/DOTC shall withhold portions of the Amortization Payments accruing or due to the Strategic Investors for the same year. The ULC shall be given a curing period limited to one (1) year after the end of each Phase only on grounds of *natural force majeure*. For purposes of this provision, a "Strategic Investor" refers to investors identified by the ULC in a list to be submitted to the ROP/DOTC no later than Financial Closure. The portion of the Amortization Payments to be withheld shall be in proportion to the unfulfilled Real Estate Development Commitment for the year, as follows:

$$\text{WAP} = \text{APSI} \times [(\text{CRED} - \text{ARED}) / \text{CRED}], \text{ where}$$

WAP = Withheld APSI

APSI = Amortization Payment due Strategic Investors (for a given year)

[Handwritten signatures and initials]

CRED = Committed Real Estate Development per Annex "P"
ARED = Actual Real Estate Development Constructed (per square meter committed for that year)

In the event that the ULC or another qualified real estate and/or development entity subsequently complies with the Real Estate Development Commitment for the given year, the withheld portion of the Amortization Payments shall be immediately paid to the ULC.

15.9 Step-In Rights on Real Estate Development. Parallel and simultaneous to Section 15.8, the ROP/DOTC shall be given the liberty to exercise step-in rights anytime during the Concession Period in the event that the ULC or its designated qualified real estate and/or development entity fails to implement the Real Estate Development Commitments based on its Business Plan. The ROP/DOTC's exercise of such step-in rights further has the following conditions precedent and authorities under this Agreement:

- (a) The ULC shall have acquired the Subject Land under the submitted Business Plan prior to the payment of Amortization Payments by the ROP/DOTC;
- (b) The Subject Land presented and acquired by the ULC under the Business Plan shall be free of liens or any other encumbrances. For this purpose, the ULC shall cause the annotation of a deed of restriction in all transfer certificates of title of the Subject Land, preventing liens or encumbrances thereon. The ULC, however, is allowed to mortgage only those properties scheduled to be developed on a certain Phase, instead of all properties to be used in the real estate development, so as not to diminish the ROP/DOTC's exercise of step-in rights; and
- (c) The ULC shall immediately transfer legal ownership of the concerned real estate in the Subject Land, free of liens and other encumbrances, to the ROP/DOTC should the corresponding Real Estate Development Commitments under the Business Plan be delayed after the one (1)-year curing period has elapsed. The ROP/DOTC should be given the liberty to exercise step-in rights for all undeveloped real estate, free of liens or any other encumbrances under any Phase of the Business Plan of the ULC.

The step-in right includes the right or option to designate another qualified real estate and/or development entity to assume the obligation to develop the undeveloped portion/s of a given Phase in the Real Estate and Development Commitments based on the Business Plan.

Section 16. FARES AND OTHER FEES

- 16.1. **Fare.** The Facility Operator is hereby authorized to impose and collect the fares specified in Annex "Q" over the Concession Period from the passengers or the users of the MRTS, plus any adjustments made pursuant to Section 16.3 (the "Agreed Fares"). However, the Agreed Fares notwithstanding, the ULC through the Facility Operator may only actually charge and collect from the passengers of the MRTS the fare as may be approved by the ROP/DOTC for any given year (the "Actual Fare"), provided, however, that the ROP/DOTC agrees and undertakes that the Actual Fares shall at all times be at par with and in no case be less favorable than the fares granted to other similar service providers, if any. The Actual Fare to be imposed shall be distance-related computed from the station of origin to the station of destination of each passenger and rounded off to the nearest Peso.

All fares collected by the Facility Operator from managing and operating the MRTS shall be directly deposited to the Passenger Revenue Account by the Facility Operator every day that the MRTS is commercially operating until the end of the Concession Period.

- 16.2. **Upward Adjustments.** ROP/DOTC may set the Actual Fare above the Agreed Fares and any incremental revenues by reason thereof shall accrue to the ROP/DOTC, provided, however, that such increase is imposed on all other similar service providers, and provided, further, that should the increase in the Actual Fare above the Agreed Fare adversely affect the estimated ridership of the MRT 7 Line, ROP/DOTC shall compensate the ULC the revenues it would have otherwise received had the projected ridership at the Agreed Fare specified in Annex "R" been met. Such compensation may, at the option of the ULC, be deducted from the ROP/DOTC Revenue Share, if any.
- 16.3. **Extraordinary Price Adjustment.** It is the intention of the Parties that should certain unforeseen events occur during the Concession Period, Agreed Fares may be adjusted (upward or downward) (an "Extraordinary Price Adjustment" or "EPA") to account for the financial consequences of such events. Such adjustments may occur from time to time as described in this section.

16.3.1. The ULC may at any time require the ROP/DOTC to consider circumstances that the ULC believes constitute Grounds for Extraordinary Price Adjustment. The ROP/DOTC may also at any time notify the ULC of circumstances that the ROP/DOTC believes constitute Grounds for Extraordinary Price Adjustment.

16.3.2. Grounds for Extraordinary Price Adjustment means any of the following circumstances:

- a. inflation and/or fluctuations in foreign exchange are singly or collectively in excess of 10% in a single year;

- b. there is any Change in Law that affects or is likely to affect the cash flow of the ULC;
- c. the ULC determines that a Material Breach that affects the Project Cost has occurred and an appropriate remedy has not been made;
- d. a change has been made to the basis of calculation or definition of the Consumer Price Index which would affect the calculation of the inflation rate;
- e. the financial performance of the ULC has been materially affected as a result of an Incident; or
- f. the ULC has incurred significant additional costs as a result of an event of an Incident which are not covered by insurance.

16.3.3. Upon determination by any of the Parties that one or more Grounds for Extraordinary Price Adjustment have occurred, the said party shall, by taking into account all information available at the time, and by making reasonable projections of all factors relevant to the future cash flows of the other party, determine what Extraordinary Price Adjustment should be made at the earliest possible time and shall notify the other party in writing setting out the basis for such determination.

16.3.4. In the event that one or more Grounds for Extraordinary Price Adjustment has occurred, the ROP/DOTC shall either (i) determine, in accordance with this Section, an Extraordinary Price Adjustment for the purposes of calculating the amount to be added or deducted to the Agreed Fares to be applied in the earliest possible time or (ii) request appropriate adjustments to the obligations of the ULC.

16.3.5 In the event that the ULC:

- a. has notified the ROP/DOTC that, in the opinion of the ULC, one or more Grounds for Extraordinary Price Adjustment have occurred but the ROP/DOTC has not concurred with that opinion; or
- b. objects to the ROP/DOTC's determination of an Extraordinary Price Adjustment, then the ULC may, not later than thirty (30) days from receipt of the written determination of the ROP/DOTC, or in case of inaction by the ROP/DOTC within 60 days from receipt of the ROP/DOTC of the request of the ULC, refer the matter

to Dispute Resolution pursuant to Section 23 hereof.

During the pendency of the Dispute Resolution mechanism/proceedings, the ULC shall be entitled to collect the Actual Fare existing immediately before the ground for Extraordinary Price Adjustment arose and the Fare Differential referred to in Section 16.4, if any.

- 16.4. **Non-Implementation.** If the Actual Fare is for any reason less than the Agreed Fare the ULC shall be entitled to collect from the ROP/DOTC the difference between the Agreed Fares and the Actual Fare applied by the ROP/DOTC for the same period multiplied by the actual number of passengers as shown in the ULC's statement or invoice (the "Fare Differential"). The Fare Differential shall be paid by the ROP/DOTC within forty-five (45) days from its receipt of the said statement or invoice from the ULC. This obligation of the ROP/DOTC shall continue until such time that all the Fare Differential are paid and deposited in the ULC Account. The ULC shall also have the option to collect the Fare Differential from any of ROP/DOTC Revenue Share and shall be deposited in the ULC Account.

Section 17. INSURANCE

- 17.1. **Insurance Coverage.** The ULC shall secure appropriate and reasonable insurance coverage against insurable risks relative to the Project, including third-party liability, from the date of Commencement of Site Works until the Project Completion Date.

The ULC shall likewise secure appropriate and reasonable insurance coverage for the Project during the Concession Period against damage or destruction, and for third party liability and business interruption for a maximum period of twelve (12) months, provided the ULC, with the consent of the DOTC, may opt to provide an alternative mechanism that may provide the same coverage against the foregoing insurable risks during the Concession Period, including but not limited to, putting up a sinking or any similar funds.

All insurance policies shall be secured from the GSIS or any reputable insurance companies acceptable to the ROP/DOTC, which acceptance shall not be unreasonably withheld, and, where applicable, accredited by the IC.

- 17.2. **Insurance Beneficiaries.** The insurance policies on the assets shall name the ULC or its nominee as the beneficiary of the insurance policies, provided, however, that proceeds of insurance policies arising from damage to any of the assets shall be used to complete, repair, rehabilitate or reconstruct the said assets.

- 17.3. **Cost of Insurance.** The cost of insurance and/or costs for the alternative

mechanism contemplated under Section 17.1 from the date of Commencement of Site Works until the Project Completion Date shall form part of Project Cost. Insurance costs and/or costs for the alternative mechanism contemplated under Section 17.1 from the date after the first anniversary of the Commencement of Concession Period shall form part of O&M Costs.

Section 18. TAXES

- 18.1. **Tax Assumption.** The Parties agree that the Project Cost has been computed on the assumption that no local or national taxes of any kind, including but not limited to, withholding tax, documentary stamp tax, value-added tax, import duties on capital equipment or other Project materials, capital gains tax, shall be imposed on the Project or the ULC. The Parties acknowledge that securing appropriate tax exemptions and/or reduction in the tax rate are conditions to the effectivity of this Agreement under Section 26.1 hereof.
- 18.2. **Tax Incentives.** Section 10 of the BOT Law provides that, among other incentives, projects in excess of One Billion Pesos (P1,000,000,000) shall be entitled to incentives as provided under the OIC, upon registration with the Board of Investments. Considering that the Project Cost is in excess of One Billion Pesos (P1,000,000,000) as indicated in Annex "T", and that the ULC intends to register the Project with the Board of Investments, the ULC should be entitled to the incentives as provided under the OIC. The ROP/DOTC shall exert best efforts to: (a) assist the ULC in securing the exemption of the Project from any and all local or national taxes of any kind, including but not limited to, withholding tax, documentary stamp tax, value-added tax, import duties on capital equipment or other Project materials and capital gains taxes; and (b) secure tax expenditure appropriations under the General Appropriations Act.
- 18.3. **Payment of Taxes.** In the event that the Project is not exempted from taxes or should the Parties fail to secure the relevant reductions in the tax rates, but the Parties still agree to continue with the Project notwithstanding Section 26.1 hereof, the Parties shall discuss and agree on how best to proceed.

Section 19. ASSIGNMENT

- 19.1. **Right to Assign Rights, Title, Interest or Obligations.** Subject to existing laws, the ULC shall have the right to assign any of its rights, title, interest or obligations under this Agreement, in whole or in part, provided that: (a) such assignment will not in any way diminish its principal liability under this Agreement; and (b) the ULC secures prior ROP/DOTC approval, which shall not be unreasonably withheld.

The above notwithstanding, the Parties agree that the ULC is hereby

expressly allowed to assign all its rights, title, interest and obligations under this Agreement to ULC HK upon notice but without need of further ROP/DOTC approval.; provided that ULC HK shall have demonstrated legal and financial capacity. by submitting proof of registration of a branch or representative office in accordance with Philippine laws.

- 19.2. **Right to Assign Income and/or Revenue.** The ULC shall have the right to assign any of its actual or expected income and/or revenue under this Agreement, in whole or in part, without need of approval from the ROP/DOTC provided that the ULC shall give written notice to the ROP/DOTC prior to the assignment.

Section 20. OTHER OBLIGATIONS OF ROP/DOTC

- 20.1. **ROP/DOTC Undertakings.** To ensure that the Project is completed on Project Completion Target Date, and complies with the approved plans and specifications set out in Annex "E" hereof, the ROP/DOTC shall, among others:
- a. Establish and maintain a Project Management Office for the Project and designate qualified personnel thereto;
 - b. Provide the ULC with peaceful possession and use of, and unrestricted access to, as well as quiet enjoyment of, and sufficient title to, the Project Site in the state and condition and agreed times, in accordance with the Work Schedule and as may be necessary or reasonably desirable for the proper prosecution and implementation of the Project, and to accordingly indemnify and hold the ULC free and harmless from or against any and all adverse claims. ROP/DOTC shall be responsible for communicating with relevant governmental authorities and other third persons in connection therewith;
 - c. Be responsible for the relocation, as and when necessary, of any utilities, including utility lines and piping, the relocation of which is necessary for the ULC to perform the work in accordance with the Project scope and the Work Schedule; provide and ensure that the appropriate public utilities like water, electricity, telephone, telex, fax, and other utilities necessary for the construction, testing and commissioning of the Project are available at the Project Site, as well as ensure that adequate power shall be at all times be available for the Project, provided that the ULC shall advance the payment for said utilities, which shall form part of the Project Cost, provided further, that should the ROP/DOTC find that based on forecasts, the existing power supply will not be sufficient for the MRTS, the ROP/DOTC may require the ULC to put up its own power supply through a Variation Order. The request should be made by the

ROP/DOTC within a reasonable time prior to Financial Closure to allow the **ULC** to include the cost of the power supply in obtaining financing for the Project;

- d. Assist the **ULC** in ensuring that, when and where necessary, there is installed and connected a power feeder line from the source of the power concessionaire to the MRTS electric substations and that power is continuously supplied to the MRTS;
- e. Ensure the interconnection of the MRTS with MRT Line 3 at the North Avenue EDSA joint station and the establishment of the joint station;
- f. Assist the **ULC** in securing necessary Permits, legal authority and approvals that would enable the **ULC** to undertake the work at the Project Site, and be responsible for the removal or appropriate abatement of all liens, encumbrances, Hazardous Substances and Items of Archaeological Interest in the Project Site;
- g. Assist the **ULC** in securing any and all Permits to enable the **ULC** to perform and comply with its obligations under this Agreement;
- h. Arrange all traffic rerouting and other traffic management measures in accordance with the Work Schedule as may be necessary for the unencumbered construction along the Main Alignment and at all intersections, as provided in the approved plans and specifications in the Technical Documents; in connection therewith, ensure that within a reasonable time prior to Commencement of Site Works, the appropriate traffic lanes on the MRTS Alignment are marked to facilitate such traffic rerouting and ensure availability of the Project Site; and
- i. Respond to all submissions and requests from the **ULC** for its approval or consent within fifteen (15) days from receipt of such requests or for a longer period as may be agreed upon by the Parties; provided, that failure to respond within the 15-day or the agreed longer period shall be deemed an approval of or consent to such requests.

The reasonable costs of the foregoing shall be part of Project Cost and shall be advanced by the **ULC** to the **ROP/DOTC** within fifteen (15) days from presentation of the proper invoices or any other document as may be agreed upon by the Parties.

Whenever feasible, the obligations of the **ROP/DOTC** as set forth in items (b), (c) and (f) above, as well as its obligation to remove or abate

Hazardous Substances and Items of Archaeological Interest in the Project Site, may be delegated under a Variation Order by the **ROP/DOTC** to the **ULC** which may, by itself or through its designated contractor, proceed to perform the said obligations.

- 20.2. **Land Acquisition Plan.** The **ROP/DOTC** and the **ULC** shall execute a Land Acquisition Plan for the purpose of ensuring the timely and complete acquisition and delivery of the Required Land and the delivery of the Right of Way in the most cost-efficient manner. The agreement may provide, among others, the procedure for acquiring the Required Land, including the timely filing by the **ROP/DOTC** of the appropriate proceedings and the manner and requirements by which amounts are to be advanced by the **ULC**. Nevertheless, the **ULC** may opt to purchase and/or secure possession over the Required Land directly from said third parties. However, the obligation to acquire, deliver and provide the clean/vacant and peaceful possession and enjoyment of the Required Land shall remain with the **ROP/DOTC**.

All costs, expenses and funding incurred in relation to the acquisition and delivery of the Required Land and the delivery of the Right of Way including any amount required to be paid for the removal or resettling of squatters or other occupiers other than the improvements left therein by the squatters relocated by **ROP/DOTC**, and/or any claims from the public or any third parties, or the removal or cleaning of the site of any man-made obstacles which may include any form of severe pollution, or other extreme activities of the **ULC** shall be part of Project Cost. **ROP/DOTC** shall hold harmless the **ULC** against all costs, damages and claims resulting from the acquisition, possession, use and enjoyment of the Required Land and Right of Way, relocation of squatters and the removal and reinstatement of utilities which shall remain as **ROP/DOTC**'s responsibility.

ROP/DOTC shall also be obliged to ensure the availability of the Required Land and Right of Way until the end of the Concession Period in a way that enables **ULC** to actually possess, use and enjoy such land and be able to perform the construction, O&M in accordance with the terms of this Agreement.

The Parties acknowledge that any delay in the delivery of the vacant and peaceful possession, use and enjoyment of the Required Land and Right of Way to the **ULC** which results in a delay in the Work Schedule and/or a proportionate increase in the Project Cost shall be considered as an Incident.

- 20.3. **Funds for the Required Land.** The acquisition of the Required Land is the responsibility of **ROP/DOTC**. However, the **ULC** shall advance the cost of the acquisition of the Required Land within thirty (30) days from Financial Closure, up to the maximum amount as specified in Annex "I". The cost for the acquisition of the Required Land shall form part of

Project Cost.

- 20.4. **Availment of Tax Incentives.** The ROP/DOTC shall render assistance to the ULC to enable the latter to fully and timely avail of all tax incentives available under the Tax Code, and shall assist the ULC in availing of fiscal and other investment incentives under the Omnibus Investment Code and under other existing laws and regulations, and in pursuance thereof, shall earnestly make timely and necessary representations and closely coordinate with the DTL, the DOF, the BIR, the BOC and other appropriate government agencies to ensure that the appropriate incentives under existing laws and regulations will be granted fully and timely to the ULC.
- 20.5. **Promotion of the Project.** The ROP/DOTC shall assist the ULC in promoting the use of the MRT Line 7 to the general public, and for this purpose, enforce and implement DOTC Memorandum Circular No. _____ dated _____ at least six (6) months prior to the commercial operations of the MRTS, and shall assist the ULC in seeking the approval of the LTFRB to open routes to and from the ITT and authorize qualified transport operators to ply said routes. The ROP/DOTC shall likewise work and closely coordinate with the MMDA to ensure that the rules and regulations issued by the latter affecting routes and traffic in Metropolitan Manila promote the aforesaid policy.

Section 21. **FORCE MAJEURE**

- 21.1. **Events of Force Majeure.** Except as otherwise provided in this Agreement, no failure or omission to carry out or observe any of the terms, provisions or conditions of this Agreement shall give rise to any claim by any Party against another or be deemed to be a breach or default of this Agreement if the same shall be caused by or arise out of:
- a. (i) any war, declared or not, or hostilities or belligerence, blockade, revolution, insurrection, insurgency, riot, public disorder, terrorist acts, expropriation, requisition, confiscation or nationalization, export or import restriction, closing of harbors, docks, canals or other assistance to or adjuncts of shipping or navigation of or within any place, rationing or allocation, whether imposed by laws, decree or regulation by, or by compliance of industry at the insistence of, any Governmental Authority, in each of the above cases not involving any Governmental Authority of or within the ROP, or (ii) fire, unusual flood, drought, earthquake, volcanic eruption, storm, lightning, tide (other than normal tide), tidal wave, unusually severe weather conditions, perils of the sea, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistance to or adjuncts of shipping or navigation, epidemic, quarantine, power

interruptions or power failures, strikes or combination of workmen, lockouts or other labor disturbances, or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of the Party affected thereby; or

- b. war, declared or not, or hostilities involving the ROP, or belligerence, blockade, revolution, insurrection, insurgency, riot, terrorist acts, public disorder, by or involving any Governmental Authority of or within the ROP, export or import restrictions by any Governmental Authority of or within the ROP, closing of harbors, docks, canals or other assistance to or adjuncts of shipping or navigation of or within the ROP, rationing or allocation, whether imposed by law, decree or regulation by, or by compliance of industry at the insistence of, any Governmental Authority of or within the ROP, or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of the ROP/DOTC or any Governmental Authority of or within the ROP.

Notwithstanding the foregoing, the ROP/DOTC (i) shall not be relieved of its obligations to carry out the terms, provisions or conditions of this Agreement by the occurrence of any of the events described in clause (b) above; and (ii) shall be obligated to pay the Amortization Payments regardless of the occurrence and/or existence of any and all events, including, but not limited to those described in paragraphs (a) and (b) above.

Each of the foregoing events, matters or things is called "Force Majeure" in this Agreement.

- 21.2. **Notice.** The Party invoking Force Majeure shall notify the other in writing as soon as reasonably possible but in no case later than fifteen (15) days from the occurrence of the nature of the Force Majeure and the extent to which the Force Majeure suspends the affected Party's obligation or affect such Party's exercise of its rights or enjoyment of the benefits contemplated under this Agreement; and (b) resume performance of its obligations as soon as the effects of the Force Majeure cease to exist.
- 21.3. **Mitigating Loss.** Subject to Section 21.1 above, if Force Majeure or the results thereof prevent the affected Party and/or its contractors, the Facility Operator and/or Maintenance Provider from performing any of its obligations or exercising its rights or enjoying the benefits under this Agreement, then the Parties shall, within three (3) days of receipt of notice, consult with each other to (a) find and adopt all reasonable steps to mitigate the losses or injuries either Party may suffer and (b) adopt solutions to restore the affected party to the position it was prior to such occurrence, including the issuance of an appropriate Variation Order in accordance with Section 12 hereof in order to extend or adjust the Work

Schedule, extend the Concession Period and/or adjust the Project Cost and correspondingly the Amortization Payments or other compensation as may be agreed and specified in the Variation Order; Provided that, the period of extension of the Work Schedule or Concession Period shall, unless otherwise specified in the Variation Order, correspond to the duration of the Force Majeure; Provided, further, that a Variation Order extending the Work Schedule or and/or Concession Period shall be deemed issued in the event that the Party invoking the Force Majeure does not receive a response from the other Party within fifteen (15) days from the other Party's receipt of notice. A copy of the Variation Order shall be submitted to the ICC for information/notice.

21.4. **Consultation Period.** The period for consultation above shall be thirty (30) days from the date of receipt of the notice unless a longer period not exceeding sixty (60) days is mutually agreed by the Parties or if the Variation Order shall be deemed issued as provided in Section 21.3 above.

21.5. **Right to Terminate.** If the Parties are not able to agree on the solution to be adopted in an appropriate Variation Order within the period specified in Section 21.4 hereof, then ULC may proceed to terminate this Agreement as provided in Section 25 hereof.

Section 22. REPRESENTATION AND WARRANTIES

22.1. **ROP/DOTC Representations and Warranties.** The ROP/DOTC hereby represents and warrants that:

- a. ROP/DOTC has all the requisite legal authority and right to execute and deliver this Agreement and to perform its obligations hereunder;
- b. The execution, delivery and performance of this Agreement comply with all Applicable Laws and will not violate, conflict with, or result in breach of any Applicable Law, or result in the imposition of any security interest, encumbrance, lien or charge under any agreement or instrument to which it is a party, or by which its assets are bound, or constitute a default or an event that, with the passing of time or giving of notice or other condition, would constitute a default under any such instrument or agreement;
- c. ROP/DOTC's obligations and liabilities under this Agreement are full faith and credit obligations of the Government of the Republic of the Philippines;
- d. ROP/DOTC's obligations under this Agreement constitute legal, valid, direct and binding obligations, which rank and will, at all times, rank at least *pari passu* in priority of payment with its

other obligations, other than obligations in respect of which a statutory preference or lien is established solely by operation of law;

- e. **ROP/DOTC** has the authority under Applicable Law to authorize the duly qualified Facility Operator and/or the Maintenance Provider to manage, operate and/or maintain all aspects of the Project and to issue and grant the Facility Operator and/or the Maintenance Provider the requisite franchise to manage, operate and maintain all aspects of the Project without the need of any other DOTC Authorization or Permit during the Concession Period and until all Amortization Payments are paid in full and in accordance with this Agreement, subject to the provisions of the Constitution and other existing laws; and
- f. Any and all information **ROP/DOTC** will provide the **ULC** relative to the Project is, to the best of its knowledge, true and accurate in all material respects.

22.2. ULC Representations and Warranties. The **ULC** hereby represents and warrants that:

- a. The **ULC** is duly organized and existing under the laws of the country of its creation or its incorporation and has the corporate power and authority, including the legal and financial capacity, to enter into and perform its obligations under this Agreement;
- b. The **ULC** has taken all necessary corporate legal action and approvals to authorize the execution, delivery and performance of this Agreement;
- c. This Agreement constitutes its legal, valid, direct and binding obligation, enforceable against it in accordance with its terms;
- d. The execution, delivery and performance of this Agreement will not violate in any respect any Applicable Law, contract or agreement to which it is a party or which is binding upon it or its assets;
- e. Neither the **ULC** nor any of its representatives has offered any government official or employee or any government agency, any consideration or commission in connection with this Agreement or exerted or utilized any corrupt or unlawful influence to secure or solicit this Agreement;
- f. The **ULC** shall not subcontract any portion of the Scope of the Work of this Agreement to any official or employee of the **DOTC** or to their relatives within the fourth civil degree of consanguinity or affinity; and

- g. Any information provided by the ULC to the ROP/DOTC relative to the Project is, to the best of its knowledge, true and accurate in all material respects.

Section 23. DISPUTE RESOLUTION

23.1. Amicable Settlement

The Parties shall meet regularly during the term of this Agreement to discuss the progress of the construction and, during the Concession Period, the O&M of the Project, to ensure that the same shall proceed satisfactorily. In the event of any dispute, they shall at all times endeavor to resolve the same amicably within one (1) month from its occurrence.

23.2. Executive Action

In the event an amicable settlement is not reached within the period stated above, or such longer period as may be agreed upon by the Parties, the Parties shall have the right to invoke executive action whereby the Secretary of DOTC or his duly designated representative who shall have the rank of at least Undersecretary and the Chief Executive Officer or the Chief Operating Officer of the ULC shall discuss the dispute, and endeavor, with or without a facilitator, to settle the same within one (1) month.

23.3. Mediation

In the event that a settlement by executive action is not reached within the period stated in the immediately preceding section, the Parties shall invoke the assistance of a mediator. The mediator shall:

- a. Have at least fifteen (15) years experience in the field related to the matter in dispute;
- b. Be completely independent of the Parties and act impartially, demonstrating neither favor nor disfavor to any Party; and
- c. Be available for a period of seven (7) consecutive working days from the start of the mediation proceedings.

The mediator shall have no authority to impose any settlement upon the Parties. The cost of the mediation proceedings shall be borne equally by the Parties.

23.4. Arbitration

If mediation fails, any and all disputes between the Parties, including any question regarding its existence, validity or termination shall be

finally settled by arbitration under the UNCITRAL Arbitration Rules.

Each Party shall appoint one arbitrator for confirmation by the competent authority under the applicable rules ("Appointing Authority"), and the two arbitrators shall agree on the third member within thirty (30) days, who shall be the chairperson of the arbitration tribunal. Should the two (2) arbitrators fail, within the above time-limit, to reach agreement on the third arbitrator, he shall be appointed by the Appointing Authority.

The seat of arbitration shall be in Singapore. The procedural law of this place shall apply where the rules are silent.

During the pendency of the arbitration proceedings, the arbitration proceedings may allow for provisional remedies in favor of either of the Parties. Any award by the arbitration tribunal shall be final and binding upon the Parties and may be enforced by judgment of a court having competent jurisdiction. All arbitration proceedings and all documents submitted to any arbitration tribunal shall be in the English language. The arbitration shall be confidential and the costs (including legal fees and disbursements) shall be as awarded by the tribunal. The tribunal shall issue a written decision within forty-five (45) days of the conclusion of the hearing(s) or the submission of the last pleading(s) whichever is later.

The award of the tribunal shall retroact to the time a Party notifies the other in writing about the existence of the controversy subject of Dispute Resolution.

23.5. General

Notwithstanding the conduct of any Dispute Resolution procedure under this section, the obligations of the Parties shall continue in full force and effect, and in particular, there shall be no stoppage of work on the Project or suspension of the O&M thereof.

Section 24. DEFAULT

24.1. **ULC Default.** Each of the following events shall constitute defaults of the ULC ("ULC Default") under this Agreement:

- a. Failure or unjustified refusal of the ULC to comply with any of its material obligations under this Agreement, which is not remediable, or, if remediable, shall remain unremedied within the period reasonably required to do so, as agreed upon by the Parties within fifteen (15) days from written notice thereof, provided however, that for the purposes of this paragraph, the ROP/DOTC may only terminate this Agreement if the operating capacity of the MRTS is less than fifty percent (50%) of that

required under the Technical Documents for a period longer than (6) months;

- b. Abandonment by the ULC of the Project;
- c. Dissolution and winding up or bankruptcy of the ULC or the issuance of a final and executory order by competent courts affecting the same; or
- d. Any proven misrepresentation of any material statement, representation, or warranty by the ULC in this Agreement, when made or when deemed to have been made, which adversely affects the ability of the ROP/DOTC to perform its obligations under this Agreement.

24.2. **ROP/DOTC Default.** Each of the following events shall constitute default of ROP/DOTC ("ROP/DOTC Default") under this Agreement:

- a. Failure or refusal of the ROP/DOTC to comply with any of its material obligations under this Agreement which is not remediable, or, if remediable, shall remain unremedied within fifteen (15) days from written notice thereof or within such longer period as may be agreed upon by the Parties;
- b. The expropriation, compulsory or involuntary acquisition or nationalization by any Governmental Authority of (i) the Project or any portion thereof, (ii) any shares of the ULC; (iii) any assets or rights of the ULC;
- c. In the event of any Change in Law, or any change in the approved technical design or specifications or any act of ROP/DOTC or any other Governmental Authority or their Representative which materially and/or adversely affects the ability of the ULC to exercise or enjoy any of its rights or to perform any of its obligations, duties and undertakings under this Agreement, or in any way renders the performance by the ULC of any of its obligations impossible, materially more difficult or materially more expensive, or materially and adversely affect the financial feasibility and economic balance of the Project or the ULC's ability to perform its obligations under the Financing Agreements and/or recover its investments in the Project;
- d. Any proven misrepresentation of any material statement, representation, or breach of warranty by the ROP/DOTC in this Agreement, which adversely affects the enjoyment by the ULC of any of its rights or the performance of its obligations, duties and undertakings under this Agreement, or the financial feasibility and economic balance of the Project;

- e. Failure to pay the Amortization Payment, or any fraction thereof, as well as the compensation and Fare Differential pursuant to Sections 16.2 and 16.4, respectively; or
 - f. A revocation or suspension by **ROP/DOTC** or any other Governmental Authority of this Agreement or any other related agreements pertaining to the Project.
- 24.3. **Mutual Agreement.** Notwithstanding the absence of any fault or breach hereof by any of the Parties, they may nevertheless mutually agree to terminate this Agreement under such terms and conditions as they will provide in a written agreement.
- 24.4. **Force Majeure.** If by reason of Force Majeure during the Concession Period, the MRTS suffers damage, which shall reduce its operating capacity by at least fifty percent (50%) or makes at least fifty percent (50%) of the MRTS inoperable for a continuous period of at least six (6) months, this Agreement may be terminated. Further, the ULC may terminate this Agreement should the Parties fail to arrive at the solution referred to in Section 21.5.
- 24.5. **Expiration.** Upon the expiration of the Concession Period and payment in full of the Amortization Payments and the other obligations of the **ROP/DOTC**, this Agreement shall be deemed terminated, and all the rights and obligations hereunder shall correspondingly cease to exist, other than all rights and obligations accrued prior to the date of such expiration including, without limitation, the obligations of **ROP/DOTC** to make termination payments in accordance with Section 25. Following expiration of the Concession Period, the Development Rights of the ULC pursuant to Section 15 hereof shall survive.

Section 25. PROCEDURE AND CONSEQUENCES FOR TERMINATION

- 25.1. **ULC Default.** Upon the occurrence of any ULC Default, the **ROP/DOTC** may serve to the ULC a written Notice of Default, specifying in detail the alleged ULC Default, and giving the ULC a reasonable time to cure the said ULC Default, such period being three (3) months or such longer period as may be approved by the **ROP/DOTC**, taking due consideration of the nature of the default and of the remedy required. If the ULC fails to remedy the ULC Default during such curing period, the **ROP/DOTC** shall send the ULC a notice informing the ULC of its intention to terminate the Agreement by reason of the ULC's failure to cure the ULC Default ("Termination Intent Notice"). The Termination Intent Notice shall provide the date when the **ROP/DOTC** intends to terminate the Agreement, which date shall not be less than ninety (90) days from the ULC's receipt of said notice. Should the ULC fail to remedy the ULC Default before the period stated in the Termination Intent Notice, the **ROP/DOTC** have the following options:

- a. Terminate this Agreement by giving written notice (the "Final Notice") and take over the Project and assume all attendant liabilities thereof subject to Applicable Law; or
- b. Allow such third parties who hold a lien on the Project, to select and designate a qualified third party to complete the Project and assume the ULC's obligations under this Agreement ("Qualified Replacement Entity"). In such a case, the ROP/DOTC shall serve such third parties and the ULC a written notice that the ULC has failed to complete the Project and is required to look for a substitute or a Qualified Replacement Entity (the "Notice of Substitution"). The appropriate parties shall have one (1) year from the receipt of the Notice of Substitution to effect a substitution. The appropriate parties shall immediately inform ROP/DOTC in writing of the selection of the Qualified Replacement Entity for ROP/DOTC's evaluation and approval, which approval shall not be unreasonably withheld. Upon the approval by the ROP/DOTC of its selection, the Qualified Replacement Entity shall exercise all of the ULC's rights and privileges and shall assume all of the ULC's obligations, duties and responsibilities hereunder, provided that it delivers to the ULC just compensation for whatever Project assets the Qualified Replacement Entity intends to use.

The ROP/DOTC and the ULC shall cooperate fully to facilitate the selection of a Qualified Replacement Entity.

In all cases of termination due to a ULC Default, the ROP/DOTC shall forfeit the appropriate performance security posted pursuant to Sections 5.1 or 5.2 posted by the ULC and shall have the right to exercise any other remedy which may be available to the ROP/DOTC under Applicable Laws.

- 25.2. **ROP/DOTC Default.** Upon the occurrence of a ROP/DOTC Default, the ULC shall give the ROP/DOTC a Termination Intent Notice (the "Intent Notice") specifying in reasonable detail the cause/s for termination. From receipt of such Intent Notice, the Parties shall consult with each other for a period of up to six (6) weeks, or such longer period as they may agree upon, as to what steps shall be taken with a view to mitigating the consequences of a probable termination, having regard to all the circumstances.

At the expiration of the said period and, unless the Parties have otherwise agreed in any other arrangement, the ULC may terminate this Agreement by giving written notice (the "Final Notice") to the other. In such instance, the ULC shall be reasonably compensated by the ROP/DOTC its actual expenses incurred in the Project plus a rate of return of Fifteen percent (15%) as of the date of termination of the

Agreement. For this purpose, the Agreement shall be deemed terminated on the day that the foregoing compensation has been fully paid to the ULC and the ULC has turned over the Project to ROP/DOTC.

- 25.3. **Mutual Termination.** If either of the Parties intends to terminate this Agreement by mutual agreement under Section 24.3, it shall give a notice of intention to terminate to the other. Following receipt of the Intent Notice, the Parties shall meet for a period of up to eight (8) weeks and endeavor to agree on the terms, conditions arrangements, and the necessary payments for such termination.

If at the expiration of the said period, the Parties are unable to agree on and execute an agreement for the mutual termination of this Agreement, the same shall remain valid and in effect.

- 25.4. **Force Majeure.** If either of the Parties intends to terminate this Agreement on the ground of Force Majeure as specified in Section 24.4 hereof, such party shall give to the other a written notice of termination. Thereafter, the Parties shall agree on the appropriate compensation that the ULC will receive from the ROP/DOTC. In case of disagreement regarding the occurrence and/or consequences of Force Majeure, the Parties may first resort to Section 23 (Dispute Resolution).

If both Parties agree on the occurrence and/or consequences of Force Majeure, but fail to agree on the revised timetable or other remedies within thirty (30) days, the Parties may, after due consultation, mutually terminate this Agreement. Following such termination, the Parties are released from their obligations under this Agreement, save for such obligations that accrued prior to the occurrence of the Force Majeure.

For the avoidance of doubt, the Parties shall bear their own respective cost incurred to-date.

- 25.5. **No Disruption.** Nothing herein shall be read or interpreted as giving any Party any right, privilege or authority to defer, postpone, suspend or otherwise forgo with the performance of, and compliance with, the provisions of this Agreement.

- 25.6. **Survival of Termination Obligation.** For the avoidance of doubt, the respective rights and obligations of both Parties in respect of the termination of this Agreement as set forth in this Section shall survive and continue to be enforceable beyond the termination hereof.

- 25.7. **Other Responsibilities.** Upon termination of this Agreement where the ROP/DOTC shall take over the Project and upon full settlement of all termination payments and without prejudice to any obligations of the relevant Party under this Section or to any claims which either Party may have against the other, all rights of the ULC in respect of the Project shall vest in the ROP/DOTC, and the ULC shall:

- a. cease all activities and services related to the Project, remove from the site all its employees and agents related to the terminal operation and vacate the premises completely; and
- b. surrender to the **ROP/DOTC** control and physical possession of the completed, developed and installed portions or components of the Project.

Section 26. EFFECTIVITY

26.1. **Effectivity.** This Agreement shall become effective on the date all of the following conditions precedent shall have been satisfied and complied with or waived by the Party concerned:

- a. The Agreement has been duly signed and executed by the Parties and approved by the President of the Republic of the Philippines;
- b. All Government approvals required for the execution and legal entry into force of this Agreement have been obtained;
- c. The ULC or ULC HK shall have submitted within one hundred eighty (180) days from execution of this agreement: (a) proof of commitment of equity contribution; and (b) proof of registration of the ULC or ULC HK branch or representative office in accordance with Philippine laws;
- d. Issuance and effectivity of the DOF Performance Undertaking;
- (e.) Copies of the Articles of Incorporation, By-Laws, or other equivalent constitutive documents the ULC and the Facility Operator, duly certified as true copies by the members' respective corporate secretaries, have been delivered to the **ROP/DOTC**;
- (f.) Copies of the resolutions adopted by the Board of Directors of the ULC and duly certified by its corporate secretary, authorizing the execution, delivery and performance of this Agreement and the other instruments contemplated herein, have been delivered to the **ROP/DOTC**;
- g. Financial Closure of the Project;
- h. Delivery by **ROP/DOTC** to the ULC of an Opinion from the Department of Justice that: (i) the **ROP/DOTC** has full power and authority to execute and deliver, and to consummate the transactions contemplated by this Agreement; (ii) the execution and delivery by **ROP/DOTC** of this Agreement, and the consummation by **ROP/DOTC** of the transactions contemplated

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thereby, have been duly authorized by all necessary action of ROP/DOTC and no further action or proceeding on the part of ROP/DOTC is necessary to authorize the execution and delivery by ROP/DOTC of this Agreement or the consummation by ROP/DOTC of the transactions contemplated thereby; and (iii) this Agreement has been duly executed and delivered by ROP/DOTC and constitutes a legal, valid and binding obligation of ROP/DOTC, enforceable against ROP/DOTC in accordance with the terms of this Agreement; and

- i. Securing of all the necessary tax exemptions and/or reductions in tax rates for the Project.

26.2. **Conditions Precedent Fulfillment Date.** The obligation of the ULC to commence Site Works, after the Effectivity of this Agreement, is subject to the following conditions precedent:

- a. Acquisition of and delivery by ROP/DOTC of the Required Land and the delivery of the Right of Way to the ULC;
- b. Agreement of ROP/DOTC and the ULC on the automatic payment mechanism for Amortization Payments;
- c. Approval by the ROP/DOTC of the relevant Detailed Engineering Design and all other technical specification; and
- d. Issuance by ROP/DOTC of all DOTC Authorizations and by the other Governmental Authorities of all Permits.

The ULC shall endeavor to achieve Financial Closure within eighteen (18) months from the signing of this Agreement. Otherwise, the Project has to be re-submitted to the ICC.

26.3. **Reimbursement of Development Costs.** The Universal LRT Corporation (BVI) has incurred costs in the preparation of the designs, plans, contracts and other documents for the Development of the Project (the "Development Costs"). Thus, the ULC must reimburse such Development Costs to Universal LRT Corporation (BVI), provided that the said Development Costs should not exceed the amount of Twenty Five Million United States Dollars (US\$25,000,000.00), and provided further, that the computation of the Development Costs shall be certified by an independent auditor acceptable to the Parties and Universal LRT Corporation (BVI).

Section 27. CONTRACT RE-OPENER

In the event that the prevailing economic conditions in the Philippines or in the world should change, i.e., should high interest rates or stringent security and other credit requirements and conditions ensue; or any change in law,

regulations, policies or government; or extraordinary events or circumstances beyond the control of the Parties make the implementation of this Agreement or the Financial Closure impractical, unfeasible, not viable or shall substantially increase the Project Cost, or prevent the exercise of the rights and/or the performance of the obligations of the Parties under this Agreement, the Parties may agree to revise or amend this Agreement and submit such revisions and amendments to the ICC. The said amendments or revisions shall be effective only after the necessary approvals have been secured.

Section 28. GENERAL LIMITATION OF LIABILITY

Except as explicitly provided for in this Agreement, neither Party shall be liable to the other Party or to any person employed by any of them for loss of profit, loss of use, interruption of service, or any indirect, consequential or punitive damages.

The total aggregate liability for all damages that may be suffered by the other Party (including obligations to indemnify) caused by negligence shall be limited to One Hundred Thousand United States Dollars (US \$100,000.00) or such other amount as may be mutually agreed by the Parties.

This exclusion and limitation of liability shall apply to the extent consistent with mandatory law and regardless of whether the liability claim is based on breach of Contract, breach of warranty, negligence, strict liability, tort, indemnity or other legal theory and shall also apply for the benefit of employees, agents and subcontractors of the responsible Party. In the event of willful misconduct, liability of the responsible Party shall be unlimited. The above provisions regarding limitation of liability shall be unlimited in duration and unaffected by any completion, termination, or cancellation of this Agreement or any part thereof.

Section 29. MISCELLANEOUS

- 29.1. **Notices.** Any notice or communication required or permitted in or otherwise issued in connection with this Agreement shall be in writing and shall be delivered personally or by courier, transmitted by facsimile transmission, or sent by registered, postage prepaid mail (airmail if international). Any such notice shall be deemed given when so delivered personally, or if transmitted by facsimile transmission or mailed, upon receipt thereof, to the following addresses:

To the ROP/DOTC : **Department of Transportation
and Communications**
17th Floor, The Columbia Tower, Ortigas
Avenue, Mandaluyong City, Philippines

To the ULC : **Universal LRT Corporation (BVI)
Limited**
c/o E.L. Enterprises, 18th Floor, Trafalgar

Plaza, 105 H.V. dela Costa Street,
Salcedo Village, Makati City, 1227
Philippines

- 29.2. **Waiver.** No waiver of any of the terms or provisions of this Agreement shall be valid unless contained in writing and signed by the Parties.

The waiver by any Party of any breach of one or more provisions of this Agreement shall not be construed as a waiver of a subsequent breach, whether of the same or different provision, unless such waiver is in writing.

The failure or delay of any Party to exercise its rights hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of such right hereunder preclude any other or future exercise thereof.

- 29.3. **Governing Law.** This Agreement shall be governed by and construed under the laws of the Republic of the Philippines.

- 29.4. **Severability.** If any provision of this Agreement is held void, invalid or unenforceable for any reason by any court, agency, tribunal, commission or other quasi-judicial body of competent jurisdiction, the remaining provisions hereof shall nevertheless remain in full force and effect.

- 29.5. **Currency.** All payments pursuant to this Agreement shall, unless otherwise expressly stated herein, be made solely in United States Dollars.

- 29.6. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

- 29.7. **Further Assurances.** From time to time, as when requested by a Party, the other Party shall execute and deliver or cause to be executed and delivered all such documents and instruments, and shall take or cause to be taken all such further or other actions, as such party may reasonably deem necessary or desirable to give effect to the provisions of this Agreement. Without limiting the foregoing, the **ROP/DOTC** shall, (i) provide appropriate opinions of counsel, and (ii) proceed with the expulsion of unauthorized third Persons from the Project Site, all at such times and in such manner as will permit the **ULC** to achieve Financial Closure.

- 29.8. **Waiver of Immunity.** Each Party waives, to the fullest extent permitted by law, any immunity from jurisdiction and immunity from execution to which such Party would be entitled without such waiver, in respect of any obligation or liability or dispute resolution procedure or arbitration award rendered under this Agreement.

29.9. **Approvals and Consents.** All approvals and consents required under this Agreement shall not be unreasonably withheld and shall be given within the periods specified in this Agreement or within such longer period as the Parties may agree upon.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the date and at the place first stated above.

REPUBLIC OF THE PHILIPPINES

**UNIVERSAL LRT (BVI)
CORPORATION LIMITED**


acting through the
**DEPARTMENT OF
TRANSPORTATION AND
COMMUNICATIONS**

By:

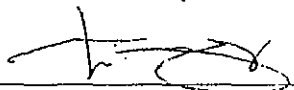
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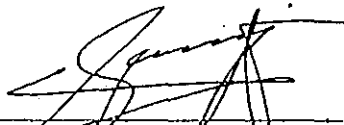
HON. LEANDRO R. MENDOZA
Secretary

ELI LEVIN
Duly Authorized Representative


DOTC-OSEC OUTGOING 08-01505

WITNESSED BY:


Elmer A. Jorj


GERARDO C. GARCIA

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES
QUEZON CITY) S.S.

BEFORE ME, this 18th day of JUNE 2008, at QUEZON CITY, Metro Manila personally appeared:

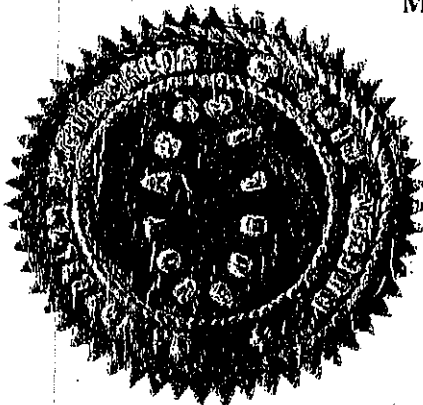
<u>Name</u>	<u>Community Tax Certificate No.</u>	<u>Date/Place Issued</u>	<u>Identification Card/ Date Issued</u>	<u>Official Issuing Agency</u>
HON. LEANDRO R. MENDOZA in his capacity as Secretary of the Department of Transportation and Communications of the Republic of the Philippines	11915877	1-29-2008 MANDALUYONG CITY		
ELI LEVIN in his capacity as duly authorized representative of the Universal LRT Corporation (BVI) Limited			BRITISH PASSPORT 761052132 03 SEPT '04	GBR

all known to me and to me known to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their free and voluntary act and deed.

This instrument refers to the **MRT 7 AGREEMENT**, which consists of fifty-nine (59) pages, including the page whereon this acknowledgment is written, and which is signed by the parties and their instrumental witnesses on each and every page thereof.

WITNESS MY HAND AND SEAL on the date and at the place first written above.

Doc. No. 45 ;
Page No. 10 ;
Book No. 11 ;
Series of 2008.



Guirnalda
MA. JOYCELYN L. GUIRNALDA
Notary Public
Until December 31, 2008
PTR No. 9914380
January 18, 2008
Quezon City
TIN- 182-947-492

H *Y* *n* *W*

**MRT 7
SUPPLEMENTAL AGREEMENT**

This **SUPPLEMENTAL AGREEMENT** entered into this 19th day of October 2009 in Makati City, by and between:

The **REPUBLIC OF THE PHILIPPINES ("ROP")**, acting through the **DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS ("DOTC")**, a department under the executive branch of the Government, with office address at the Columbia Tower, Ortigas Avenue, Mandaluyong City, and represented herein by its Secretary, **LEANDRO R. MENDOZA**, and hereinafter referred to as the **"ROP/DOTC"**;

-and-

UNIVERSAL LRT CORPORATION (BVI) LIMITED, a corporation duly organized and existing under and by virtue of the laws of the British Virgin Islands, with registered address at c/o Robertson Hasell Ltd., 1712 Tower One, Times Square, 1 Matheson St., Hong Kong SAR, herein represented by its duly authorized representative, **SALVADOR B. ZAMORA II**, and hereinafter referred to as the **"ULC"**;

(**ROP/DOTC** and the **ULC** shall be collectively referred to as the **"Parties"**)

WITNESSETH, THAT:

WHEREAS, the Parties entered into the MRT 7 Agreement dated 18 June 2008 (the **"Agreement"**) for the MRT 7 Project;

WHEREAS, the Parties mutually agreed, to the need, for the avoidance of doubt, to clarify the following provisions of the Agreement;

NOW, THEREFORE, the Parties hereby agree as follows:

Section 1. Section 15.7 of the Agreement shall be amended to read as follows:

"15.7 Real Estate Development Commitments and Performance Bond. The **ULC** undertakes, directly or indirectly, through qualified real estate and/or development entities, to develop the Subject Land and commit to deliver over a period of twenty (20) years starting from the year after commencement of the Concession Period, of an average of (i) Two Thousand Five Hundred (2,500) residential units per year (at an average floor area of forty (40) square meters per unit) or one hundred thousand (100,000) square meters of residential units per year; and (ii) Three Hundred (300) units of office space per year (at an average floor area of one hundred fifty (150) square meters per unit) or forty-five

thousand (45,000) square meters of office space per year, in accordance with Annex "P", as amended. In addition, the Real Estate Development Commitments of ULC shall include a ninety thousand (90,000) square-meter gross area mall. Actual development of the Subject Land, and the determination of compliance with the Real Estate Development Commitments, shall be done in phases, with each phase (the "Phase") consisting of three (3) years, save for the last Phase which shall consist of two (2) years of planned development. Upon effectivity of this Agreement pursuant to Section 26.1 hereof, the ULC shall, directly or indirectly, submit for approval of ROP/DOTC a Master Real Estate Development Plan and post a performance bond for and upon the commencement of each Phase and shall be callable upon the failure of the ULC or the designated real estate and/or development entity to comply with the Real Estate Development Commitments for a given Phase, and after the curing period referred to in Section 15.8 below. The performance bond shall be a ten percent (10%) three (3)-year rolling performance bond on the Real Estate Development for a given Phase, as stated in Annex "S". The amount of the bond may be modified upon acceptance by the Parties of the Master Real Estate Development Plan, provided, such will not affect the Real Estate Development Commitments. In the event that a Phase of the committed Real Estate Development Commitments is constructed in advance of the period or program set therefore, the amounts of the bond for the succeeding Phases shall be accordingly adjusted. The call amount will be proportional to the floor area of the unconstructed or uncompleted units over the floor area of the committed residential and office units multiplied by the amount of the bond.

The ULC may commence construction works pursuant to its Real Estate Development Commitments upon effectivity of this Agreement, and that all residential units and office spaces constructed shall be considered in determining compliance with the ULC's Real Estate Development Commitments for the first year, with the excess to be counted/credited to future years. All floor areas constructed in excess of the committed floor areas of residential and office units in any given year will be considered in determining compliance in subsequent years. Subject to confirmation of DOF, all residential and office units constructed and developed in the adjacent properties within a two (2) kilometer radius of the perimeter of the Subject Land [as shown in Drawing No. IM-03 of the Technical Documents (Annex "E" hereof)] starting from the effectivity of this Agreement pursuant to Section 26.1 hereof will be considered in the number of units constructed and completed for a given year.

Section 2. This Supplemental Agreement shall become effective upon due execution hereof.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the date and at the place first stated above.

REPUBLIC OF THE PHILIPPINES

**UNIVERSAL LRT CORPORATION
(BVI) LIMITED**

Acting through the

**DEPARTMENT OF
TRANSPORTATION AND
COMMUNICATIONS**

By:

HON. LEANDRO R. MENDOZA
Secretary

By:

SALVADOR B. ZAMORA II
Duly Authorized Representative



09-002545

DOTC-OSCC OUTGOING

0-360

WITNESSED BY:

GERARDO C. GARCIA

ACKNOWLEDGMENT

Republic of the Philippines)
~~MAKATI~~ City, Metro Manila) S.S.

BEFORE ME, this 19th day of October 2009, at ~~MAKATI~~ City, Metro Manila personally appeared:

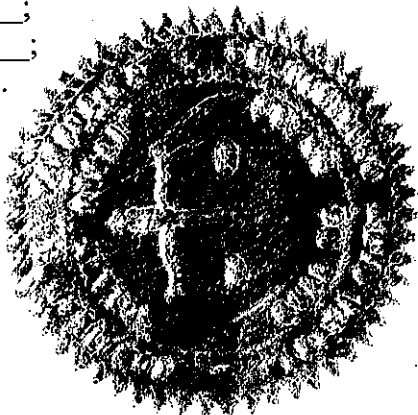
<u>Name</u>	<u>Community Tax Certificate No.</u>	<u>Date/Place Issued</u>	<u>Identification Card/Date Issued</u>	<u>Official Issuing Agency</u>
HON. LEANDRO R. MENDOZA	20464615	19 February 2009 / Mandaluyong City		
in his capacity as Secretary of the Department of Transportation and Communications of the Republic of the Philippines				
SALVADOR B. ZAMORA II			Passport No. TT0720817 / 31 August 2006	Department of Foreign Affairs
in his capacity as duly authorized representative of the Universal LRT Corporation (BVI) Limited				

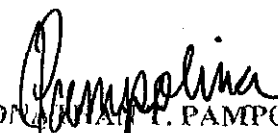
all known to me and to me known as the same persons who executed the foregoing instrument and they acknowledged to me that the same is their free and voluntary act and deed.

This instrument refers to the **MRT 7 SUPPLEMENTAL AGREEMENT**, which consists of six (6) pages, including the page whereon this acknowledgment is written, and which is signed by the parties and their instrumental witnesses on each and every page thereof.

WITNESS MY HAND AND SEAL on the date and place first above written.

Doc. No. 13 ;
Page No. 4 ;
Book No. 1 ;
Series of 2009.




JON A. T. PAMPOLINA
Notary Public
Until December 31, 2010
PTR No. 1579945
January 14, 2009
Makati City
TIN-223-802-348

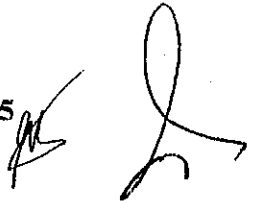
ANNEX "S"

**AMOUNT OF PERFORMANCE BOND
FOR REAL ESTATE DEVELOPMENT COMMITMENTS**

YEAR	Investment/Development/ Construction Cost (IDCC) (In PhP Millions)	AMOUNT OF BOND (In Million Pesos)
1	7,144.90	714.49
2	9,916.87	991.69
3	6,035.36	603.54
4	4,788.54	478.85
5	7,094.00	709.40
6	7,319.12	731.91
7	7,685.07	768.51
8	8,069.33	806.93
9	5,555.93	555.59
10	5,833.73	583.37
11	6,125.41	612.54
12	6,431.68	643.17
13	6,753.27	675.33
14	7,090.93	709.09
15	7,445.48	744.55
16	7,296.57	729.66
17	7,661.40	766.14
18	8,213.62	821.36
19	9,050.03	905.00
20	4,751.26	475.13
21	0.00	0
22	0.00	0
23	0.00	0
24	0.00	0
25	0.00	0

NOTE:

- Years 1 to 25 refer to the Concession Period.



ANNEX "P"

BUSINESS PLAN

YEAR***	RESIDENTIAL		COMMERCIAL	
	UNITS*	TOTAL FLOOR AREA**	UNITS*	TOTAL FLOOR AREA**
1	2,500	100,000	300	45,000
2	2,500	100,000	300	45,000
3	2,500	100,000	300	45,000
4	2,500	100,000	300	45,000
5	2,500	100,000	300	45,000
6	2,500	100,000	300	45,000
7	2,500	100,000	300	45,000
8	2,500	100,000	300	45,000
9	2,500	100,000	300	45,000
10	2,500	100,000	300	45,000
11	2,500	100,000	300	45,000
12	2,500	100,000	300	45,000
13	2,500	100,000	300	45,000
14	2,500	100,000	300	45,000
15	2,500	100,000	300	45,000
16	2,500	100,000	300	45,000
17	2,500	100,000	300	45,000
18	2,500	100,000	300	45,000
19	2,500	100,000	300	45,000
20	2,500	100,000	300	45,000

Notes:

* At an average floor area of Forty (40) square meters per Residential Unit and One Hundred Fifty (150) square meters per commercial unit.

** In square meters.

*** Year refers to every Twelve (12) month period starting from the commencement of the concession period.

ANNEX "A"

Republic of the Philippines
DEPARTMENT OF FINANCE
Manila

[DATE]

UNIVERSAL LRT CORPORATION LIMITED

c/o Robertson Hasell Ltd.
1712 Tower One, Times Square
1 Matheson Street, Hong Kong

Re : **PERFORMANCE UNDERTAKING**
Republic of the Philippines

Sirs:

This confirms that the obligations of the Republic of the Philippines through the Department of Transportation and Communications (ROP/DOTC) under the MRT 7 Agreement dated 18 June 2008 between the ROP/DOTC and Universal LRT Corporation Limited carry the full faith and credit of the Republic of the Philippines and that the Republic of the Philippines irrevocably and unconditionally ensure that the DOTC shall perform at all times its obligations as stipulated and contemplated under the MRT 7 Agreement as they fall due until all obligations under the same have been fulfilled.

In this connection, the Republic of the Philippines hereby represents and warrants that:

1. It has the power to issue this undertaking and to exercise its rights and perform its obligations hereunder and all actions required to authorize the execution by the Republic of the Philippines of this Undertaking and the performance by it of its obligations hereunder has been duly undertaken;
2. The obligations expressed to be assumed by the Republic of the Philippines in this Undertaking are, under the laws of the Philippines, legal, valid and binding obligations of the Republic of the Philippines enforceable against it in accordance with the terms hereof;
3. The execution, delivery and performance of this Undertaking do not and will not (i) violate the Constitution or any other laws of the Republic of the Philippines; (ii) conflict with, or result in the breach of any agreement or instrument to which the Republic of the Philippines is a party or by which its property is bound including such international agreements signed by the Republic of the Philippines or any subdivision thereof with international

[Handwritten signatures and initials]

institutions and organizations; or (iii) constitute a default or event that, with the passing of time or giving notice or other condition, would constitute a default under any such agreement or instrument including such international agreements signed by the Republic of the Philippines or any subdivision thereof with international institutions and organizations;

4. All acts, conditions and things required by the laws and the Constitution of the Republic of the Philippines to be done, fulfilled, obtained or performed, including, without limitation, all consents, licenses, permits, approvals, certificates and registrations by or with any governmental agency or any other authority in the Republic of the Philippines in order to enable the Republic of the Philippines to issue, exercise its rights and perform its obligations hereunder and to make this Undertaking admissible in evidence in the Republic of the Philippines have been done, fulfilled, obtained and performed;
5. The execution, delivery and performance by the Republic of the Philippines of this Undertaking are private and commercial acts (and not governmental acts), and thus, subject to civil and commercial law. In this connection, the Republic of the Philippines consents to be sued in respect of obligations under this Undertaking and waives and agrees not to claim any immunity from suit, execution or attachment (whether in aid of execution, before judgment or otherwise) or other legal processes in respect of its obligations under this Undertaking, provided, that this waiver will not apply to: (a) property of the consular or diplomatic mission of the Republic of the Philippines; (b) property of a military character and under the control of a military authority or defense agency; and (c) property located in the Republic of the Philippines and dedicated solely to public or governmental use (as distinguished from patrimonial property or property dedicated to commercial use); and
6. All litigations resulting from this undertaking shall be governed by the applicable laws of the Republic of the Philippines, however, any arbitration shall be under the International Court of Arbitration in Singapore; and
7. The undersigned signatory was duly authorized and has full powers to execute this Undertaking for and on behalf of the Republic of the Philippines.

Very truly yours,

REPUBLIC OF THE PHILIPPINES

By:

Secretary of Finance

ANNEX "B"

ESCROW AGREEMENT

Parties	Universal LRT Corporation Limited or its designated subsidiary/affiliate, Republic of the Philippines through the Department of Transportation and Communications and the Escrow Agent.
Appointment of the Escrow Agent	Appointment and designation of _____ as Escrow Agent.
Escrow Accounts	<p>Parties to establish the following:</p> <ul style="list-style-type: none"> a. Amortization Payment Account – where all due Amortization Payments as specified in the Schedule of Payments are to be deposited by the ROP/DOTC; b. Passenger Revenue Account – where all passenger revenues or fares collected by the Qualified Facility Operator shall be deposited; c. ROP/DOTC Account – where all the funds to be received by the ROP/DOTC as its share from the proceeds of Universal LRT Corporation Limited or its designated subsidiary/affiliate's exercise of its development rights, from the upside of other developments and all other proceeds, income or revenue it may receive from the project are to be deposited.
Utilization of the Systems Fee Account	All deposits in this escrow account to be distributed in accordance with the agreement of the parties.
Utilization of the Passenger Revenue Account	<p>All deposits in the Passenger Revenue Account shall be distributed by the Agent Bank as follows:</p> <ul style="list-style-type: none"> First – deduction of any amounts payable to other operators under any unified ticketing or fare collection system, if any Second - deduction of the O&M Costs and direct payment of the amount thereof to the Facility Operator [and/or the Maintenance Provider], including the fees to be charged by the Agent Bank and the payment of the amount thereof to the said bank concerned
Utilization of the ROP/DOTC Account	All deposits in the ROP/DOTC Account shall be distributed or utilized exclusively to defray ROP/DOTC's obligations to Universal LRT Corporation Limited or its designated

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	subsidiary/affiliate.
Powers and Duties of Escrow Agent	Parties to agree on the powers and duties of Escrow Agent including details on the following: <ol style="list-style-type: none"> 1. Diligence requirement 2. Liability for fault or negligence 3. Release or waiver 4. Termination of Duties
Escrow Fees	FOR NEGOTIATION.
Accounting and Reportorial Requirements	The Agent shall keep complete and accurate books of account and that the parties shall have full access. Agent shall also prepare and submit to the parties quarterly financial statements.
PDIC Coverage	Parties shall determine whether or not the escrow funds shall be insured with the PDIC and who should pay for the costs and if excluded who shall be responsible for the losses.
Termination	Parties to agree on the grounds for revocation of the agreement, the procedure thereof and obligations of the parties until complete discharge.

ANNEX "C"

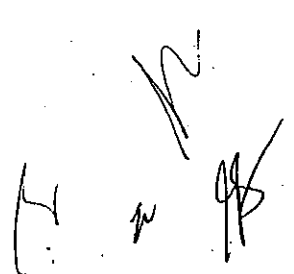
EPC WORKS

1. GENERAL OBLIGATIONS.

- 1.1 The EPC Contractor shall carry out and complete the EPC Works in a good and workman like manner, in accordance with the Scope of Work and the other relevant provisions of the EPC Contract, and within the time limits set forth in the Work Schedule such that upon successful completion of all the ULC's acceptance tests, the EPC Contractor shall have constructed a fully operational Project.
- 1.2 The EPC Contractor shall have sole overall responsibility on a turnkey basis for the construction means, methods, techniques, sequences, and procedures for coordinating all portions of the EPC Works under the contract documents, subject always to the provisions of the EPC Contract.

Unless otherwise explicitly provided in the contract documents, the EPC Contractor shall supply and pay for all labor, tools, implements, equipment, machinery, utilities, materials, necessary supervision and any other facilities or services required for the proper and timely execution and completion of the EPC Works in a good and workman like manner in accordance with the Scope of Work and within the time limits set forth in the Work Schedule.

- 1.4 All materials incorporated in the EPC Works shall be new and of good quality, unless otherwise specified in a Variation Order.
- 1.5 The EPC Contractor shall prosecute the EPC Works continuously and diligently and furnish sufficient forces, construction plant, and equipment to achieve completion of the EPC Works within the time limits set forth in the Work Schedule using only qualified and competent personnel.
- 1.6 The EPC Contractor shall provide all superintendence during execution of the EPC Works as may be necessary for the proper fulfillment of the EPC Contractor's obligations under the EPC Contract. Superintendence shall include supervision and inspection by qualified professional designers and advisers employed by the Contractor, experienced in transit design and construction, whose responsibility shall be to ensure that technical standards of workmanship, materials, and quality are being maintained in accordance with the Scope of Work. Prior to commencement of the EPC Works, the EPC Contractor shall designate an individual to serve as the EPC Contractor's Representative (the "EPC Contractor's Representative") who will be the primary contact between the ULC and the EPC Contractor. The EPC Contractor's Representative shall have knowledge of the written and spoken English Language sufficient to permit competent



communication in such language with the program manager and with other Representatives of the ULC, and shall conduct business with the program manager in English. The EPC Contractor may replace the EPC Contractor's Representative at the EPC Contractor's discretion effective upon notice to the ULC.

- 1.7 The EPC Contractor shall timely deliver the Rolling Stock and all other material, equipment, tools and goods to the Project Site to ensure completion of the EPC Works in accordance with the Work Schedule.
- 1.8 The EPC Contractor shall supply all spare parts for the Project including, without limitation, for the Rolling Stock, necessary to successfully complete the ULC's acceptance tests in accordance with the terms hereof.
- 1.9 The EPC Contractor shall use its reasonable efforts to review and check all drawings, specifications, design criteria, concept drawings and similar information supplied by the ULC and its Representatives and shall give prompt notice to ULC, the program manager and DOTC of any error, omission, fault or other defect in such information which the EPC Contractor discovers when performing such review or otherwise performing the EPC Works.
- 1.10 The EPC Contractor shall reimburse the ULC for any payment made or costs incurred by the ULC with respect to the buyer supplies or the buyer-supplied drawings.

2. **HAZARDOUS SUBSTANCE AND ARCHEOLOGICAL FINDINGS.** Upon the discovery of any Hazardous Substance or Items of Archeological Interest at the Project Site, the EPC Contractor shall promptly :

- (a) notify the ULC of such conditions;
- (b) subject to express prior order to the ULC, use its reasonable best efforts to mitigate the effects of any such discovery of the performance on the EPC Works; and
- (c) provide reasonable assistance to the ULC in mitigating the effects of any such discovery, it being understood that, as between the ULC and the EPC Contractor, the ULC shall be responsible for the abatement of any Hazardous Substance encountered.

Any Item of Archeological Interest shall, as between the ULC and the EPC Contractor, be deemed to be the absolute property of the ULC. The EPC Contractor shall take reasonable and prudent precautions to prevent its Representatives or any other Person from removing or damaging any

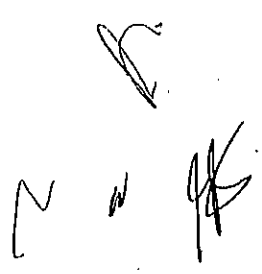
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such Items of Archeological Interest other than in accordance with the direction of the ULC.

3. **EPC CONTRACTOR ACQUIRED PERMITS.** The EPC Contractor shall obtain, maintain and pay for (and shall furnish copies to the ULC of) all EPC Contractor Acquired Permits. The ULC shall provide the EPC Contractor with such assistance and information as is reasonably requested by the EPC Contractor in connection with obtaining any EPC Contractor Acquired Permits..

4. **SUPPLY OF ROLLING STOCK OBLIGATIONS.** The EPC Contractor hereby Agrees to:

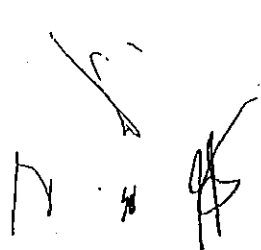
- 4.1 manufacture the Rolling Stock in accordance with the requirements, inspect and test the Rolling Stock in accordance with the requirements and reassemble, test, set up, check out, commission and deliver the Rolling Stock in accordance with the requirements;
- 4.2 provide to the ULC a copy of the shipping documents to be provided pursuant to the Agreement promptly after receipt thereof by the EPC Contractor;
- 4.3 not approve any "Variation Order" without the prior consent of the ULC;
- 4.4 provide the ULC, and not approve without the ULC's approval: (a) each submission of seller-supplied drawings and data, the ULC being deemed to have given its approval if it fails to either approve or disapprove within fourteen (14) days after receipt of such submission of seller-supplied drawings and data; and (b) copies of all operations, maintenance and spare parts manuals and instruction books necessary to operate the Rolling Stock in a safe, efficient and effective manner;
- 4.5 supply to the ULC special tools for repairs and maintenance;
- 4.6 provide the ULC, and not approve without the ULC's approval, a detailed plan for the training of operator personnel and maintenance personnel of the DOTC and the ULC; once the ULC's approval has been obtained, a training plan may only be changed with the ULC's prior consent;
- 4.7 provide the ULC, and not approve without the ULC's approval, an operator training manual and a maintenance training manual to be used in the training of operator personnel and maintenance personnel of DOTC and the ULC; once the ULC's approval has



been obtained, a training manual may only be changed with the ULC's prior consent;

- 4.8 provide the operator and maintenance training services including, without limitation, the cost of instructors and facilities, the provision of training aids and materials, full board lodging, and local transportation in the country of manufacture of the Rolling Stock and major system components; provided, however, that all other costs incurred in sending or maintaining such personnel for training shall not be the responsibility of the EPC Contractor;
- 4.9 not issue the final acceptance certificate provided without the prior approval of the ULC;
- 4.10 supply to the ULC the spare parts and maintain a stock of the spare parts necessary for the repair or maintenance of the Rolling Stock, all for the time period and on the terms set forth;
- 4.11 provide to the ULC, and not approve without the ULC's approval, a proposed set of detailed warranty procedure to be followed in the performance of its obligations; once the ULC's approval has been obtained, the warranty procedures may only be changed with the ULC's prior consent; and
- 4.12 not request or approve the replacement of any specialist without the ULC's prior approval.

5. UTILITIES. The EPC Contractor shall procure and pay for all utilities necessary to perform the EPC Works.



ANNEX "D"

SCHEDULE OF AMORTIZATION PAYMENTS

YEAR	Amount (US\$ Million)
1	108
2	108
3	108
4	108
5	108
6	108
7	108
8	108
9	108
10	108
11	108
12	108
13	108
14	108
15	108
16	107.9
17	107.9
18	107.9
19	107.9
20	107.9
21	0.1
22	0.1
23	0.1
24	0.1
25	0.1

Notes

1. The Amortization Payments shall be in equal semi-annual payments.
2. The Amortization Payments shall commence six (6) months from the issuance of the Certificate of Substantial Completion.
3. The prices utilized as basis for the Amortization Payments indicated herein are as of April 2005.
4. The Amortization Payments shall be adjusted pursuant to the escalation formula stated in Annex "I" and modified in the currencies indicated in the Financing Agreements.

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ANNEX "E"

TECHNICAL DOCUMENTS

SECTION 1: PERFORMANCE REQUIREMENTS

- 1.0 INTRODUCTION
- 2.0 DEFINITION, TERMS AND ABBREVIATIONS
- 3.0 SYSTEM DESCRIPTION
- 4.0 SYSTEM INTERFACES AND COORDINATION
- 5.0 SYSTEM OPERATING CRITERIA
- 6.0 SYSTEM ENVIRONMENTAL DESIGN CRITERIA
- 7.0 SAFETY AND SECURITY TECHNICAL REQUIREMENTS
- 8.0 SYSTEM SERVICE & AVAILABILITY REQUIREMENTS
- 9.0 ROLLING STOCK
- 10.0 POWER DISTRIBUTION SYSTEM AND BACKUP POWER SUPPLIES
- 11.0 THIRD RAIL SYSTEM
- 12.0 SIGNALING SYSTEM
- 13.0 COMMUNICATION SYSTEM
- 14.0 GUIDEWAY EQUIPMENT
- 15.0 STATION AND STATION EQUIPMENT
- 16.0 FARE COLLECTION
- 17.0 MAINTENANCE FACILITIES AND EQUIPMENT
- 18.0 CORROSION CONTROL AND GROUNDING
- 19.0 GUIDEWAY ALIGNMENT AND CORRIDOR CRITERIA
- 20.0 STRUCTURAL CRITERIA FOR FACILITIES
- 21.0 PROVISIONS FOR ELDERLY AND HANDICAPPED PASSENGERS
- 22.0 CONSTRUCTION CRITERIA
- 23.0 FACILITIES DESIGN
- 24.0 UTILITIES
- 25.0 OPERATIONS AND MAINTENANCE TRAINING

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SECTION 2: SCOPE OF WORK

- 1.0 SUMMARY OF THE WORK
- 2.0 PARTICULAR REQUIREMENTS OF WORK
- 3.0 DESIGN ADMINISTRATION
- 4.0 CONSTRUCTION ADMINISTRATION

SECTION 3: MILESTONES

SECTION 4: COMMISIONING AND TESTING

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Annex "F"
MRT 7 LAND AREAS REQUIRED

Chainage		Description	Size,m	Area,m2	Remarks
0+400	2+300	North Ave -QMC	2x1900	3,800	widen road due to area displaced by columns. Govnt property Veterans Hospital/N.Aquino-Wildlife/Park
2+375	2+550	Quezon Memorial Circle Station	175x30.55	5,347	Government property:Park
13+300	15+400	Corner Commonwealth-Regalado Ave to Mindanao Ave	4x2100	8,400	Widen road due to area displaced by columns
15+900	16+000	Corner Regalado Ave-Quirino Ave:front of SM Fairview		2,795	Triangular private lot
16+900	20+200	Quirino highway-La Mesa watershed side	10.50x3300	34,650	Includes at grade/Sacred Heart Station space La Mesa Watershed:government property
18+100	18+500	Realignment of Quirino highway (curve section)		24,023	Acquire area to straighten highway section
20+200	22+800	Tala Station-San Jose Station	6x2600	15,600	Widen exstg road to add 2 lanes only
23+000		Intermodal terminal with 60-bus parking		60,000	San Jose tunnel station with 60-bus parking.
		Depot		110,000	Includes Administrative, operations/maintenance office.
		Tala Access Road	38x22000	836,000	Generally private landowners/agricultural lands
TOTAL ROW REQUIREMENT				1,096,815	

2
4
11

ANNEX "G"

AMOUNT OF PERFORMANCE BOND FOR O & M

YEAR	AMOUNT,US\$
1	1,000,000
2	950,000
3	900,000
4	850,000
5	800,000
6	750,000
7	700,000
8	650,000
9	600,000
10	550,000
11	500,000
12	475,000
13	450,000
14	425,000
15	400,000
16	375,000
17	350,000
18	325,000
19	300,000
20	275,000
21	250,000
22	225,000
23	200,000
24	175,000
25	150,000

Note:

The Performance Bond shall be posted upon the issuance of the Certificate of Substantial Completion.

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ANNEX "H"

CERTIFICATE OF TRANSFER OF OWNERSHIP

It is hereby certified that pursuant to Section 6.2 of the Concession Agreement dated 18 June 2008 (the "Concession Agreement") for the MRT Line 7 Project (the "Project"), and for and in consideration of the Amortization Payment received by the Universal LRT Corporation Limited ("ULC") from the Republic of the Philippines through the Department of Transportation and Communications ("ROP/DOTC") on _____ in the amount of _____, ULC has caused the transfer of _____% *pro-indiviso* interest in the assets of the Project consisting of the Metro Rail Transit System, Intermodal Transportation Terminal and the Highway as enumerated in Section 3.1 of the Concession Agreement (the "Assets"). [This Amortization Payment, in addition to the previous Amortization Payments made by the ROP/DOTC in relation or proportion to the total Amortization Payment still to be made during the Concession Period, represents an aggregate _____% *pro-indiviso* interest in the Assets as of the date hereof.] All capitalized terms in this Certificate shall have the same meaning as used and defined in the Concession Agreement.

Done in _____ on _____.

UNIVERSAL LRT CORPORATION
LIMITED

By:

[NAME]
[Position]

[Handwritten signature]

[Handwritten signature]

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ANNEX "I"

MRT 7 PROJECT COST

ITEM	DESCRIPTION	PRICE (In US\$ Million)
1	CIVIL WORKS (Note 1)	312.20
	DEPOT	34.84
	STATIONS	91.10
	GUIDEWAYS	179.02
	PROPERTY ACQUISITION/RIGHT OF WAY	7.24
2	SYSTEMS	330.84
	TRACKWORKS	58.61
	SIGNALING	44.07
	TRACTION POWER SYSTEM	91.32
	THIRD RAIL SYSTEM	22.46
	COMMUNICATION SYSTEM	18.33
	AUTOMATIC FARE COLLECTION SYSTEM	27.80
	ESCALATORS/ELEVATORS	40.95
	DEPOT MAINTENANCE SYSTEM	27.30
3	ROLLING STOCK	221.15
4	ROAD SYSTEM/ROW	57.53
5	CONTINGENCY	75.00
6	OTHER PROJECT COST	139.13
	Program Manager	31.43
	Project Development (Note 2)	20.72
	Owner's Administration	18.08
	Insurance	14.97
	DOTC Related Costs	30.91
	Pre-Operating and Commissioning	5.14
	Project Close-out	4.42
	Financial & Legal Advisory	13.46
7	FINANCING FEES, ETC.	17.00
8	INTEREST DURING CONSTRUCTION	82.75
	TOTAL (US\$ MILLION) 1-8 (Note 3)	1,235.60

Notes:

1. **Provision for MRT 4 connection (\$11.52m) included.**
2. Actual amount of Project Development Cost shall be as certified by an independent auditor acceptable to the Parties.
3. Prices indicated herein are as of April 2005 and shall be adjusted to the prices as of the date of signing of this Agreement in accordance with the parametric formula discussed below.

PARAMETRIC FORMULA FOR PRICE ADJUSTMENT

- I. The Parametric Formula shall be used to adjust the Prices reflecting the changes in the prices of labor, materials and equipment necessary in the implementation/completion of the Project both local and at the country where the equipment/components shall be sourced (in this case, France) from the date the Agreement was reached in April 2005 until the date of the signing of the said Agreement.

The basic principle of the Parametric Formula is similar to the formula adopted in the Government Procurement Policy Board guidelines (Resolution No. 07-2004) using the published consumer price indices published by a government entity in the Philippines and at the country where the equipment/components shall be sourced (in this case, France). The Parametric Formula shall apply to the prices in each item indicated in the Project Cost which will be adjusted to the Prices as of the signing of the Agreement.

For the purpose of the adjustment, the Prices shall be divided into components as follows: (1) on-shore labor, on-shore equipment and on-shore materials, and (2) off-shore labor, off-shore equipment and off-shore materials. For the purpose of adjustment, the on-shore materials, on-shore labor, on-shore equipment, off-shore materials, off-shore labor, and off-shore equipment are deemed to be in the following percentages of the Prices (total of 85%). The percentages shall differ depending on the type of work Item. Civil works and roadway shall be mostly on-shore works. Rolling Stock and electro-mechanical works shall be mostly off-shore works but will also have on-shore works for installation.

II Parametric Formula

$$PiS_n = PoS_n \times (ki - 0.10)$$

$$\text{If } ki > 1.10$$

$$PiS_n = PoS_n$$

$$\text{If } 0.90 \leq ki \leq 1.10$$

$$PiS_n = PoS_n \times (ki + 0.10)$$

$$\text{If } ki < 0.90$$

The value of ki varies for each item of work and is computed as follows:

$$ki = 0.15 + (A \times MiOnshS_n / MoOnshS_n + B \times LiOnshS_n / LoOnshS_n + C \times EiOnshS_n / EoOnshS_n) + (D \times MiOffshS_n / MoOffshS_n + E \times LiOffshS_n / LoOffshS_n + F \times EiOffshS_n / EoOffshS_n)$$

Where:

$P_i S_n =$ adjusted Price of the Item in the Project Cost to the date of signing of Agreement in Philippine Pesos.

$P_o S_n =$ original price of the Item in the Project Cost (as of April 2005) in Philippine Pesos.

$A =$ the coefficient representing the proportionate value of on-shore materials cost to the total of each Price item.

$M_i \text{Onsh} S_n =$ the price index of appropriate materials in the Philippines as of the month of the signing of the Agreement. Such price index shall be published by a government agency or department or a government-owned or controlled entity in the Philippines.

$M_o \text{Onsh} S_n =$ the price index of appropriate materials in the Philippines, as of April 2005.

$B =$ the coefficient representing the proportionate value of on-shore labor cost to the total of each Price item.

$L_i \text{Onsh} S_n =$ the price index of appropriate labor cost or cash earnings in the Philippines as of the month of the signing of the Agreement. Such price index shall be published by a government agency or department or a government-owned or controlled entity in the Philippines.

$L_o \text{Onsh} S_n =$ the price index of appropriate labor cost or cash earnings in the Philippines, as of April 2005.

$C =$ the coefficient representing the proportionate value of on-shore equipment cost to the total of each Price item.

$E_i \text{Onsh} S_n =$ the price index of appropriate equipment cost in the Philippines as of the month of the signing of the Agreement. Such price index shall be published by a government agency or department or a government-owned or controlled entity in the Philippines.

$E_o \text{Onsh} S_n =$ the price index of appropriate equipment cost in the Philippines, as of April 2005.

D = the coefficient representing the proportionate value of off-shore materials cost to the total of each Price item.

MiOffshS_n = the price index of appropriate materials in France as of the month of the signing of the Agreement. Such price index shall be published by a government agency or department or a government-owned or controlled entity in France.

MoOffshS_n = the price index of appropriate materials in France, as of April 2005.

E = the coefficient representing the proportionate value of off-shore labor cost to the total of each Price item.

LiOffshS_n = the price index of appropriate labor cost or cash earnings in France as of the month of the signing of the Agreement. Such price index shall be published by a government agency or department or a government-owned or controlled entity in France.

LoOffshS_n = the price index of appropriate labor cost or cash earnings in France, as of April 2005.

F = the coefficient representing the proportionate value of off-shore equipment cost to the total of each Price item.

EiOffshS_n = the price index of appropriate equipment cost in France as of the month of the signing of the Agreement. Such price index shall be published by a government agency or department or a government-owned or controlled entity in France.

EoOffshS_n = the price index of appropriate equipment cost in France, as of April 2005.

The sum of A, B, C, D, E, F and 0.15 must equal to 1.

The Percentage Coefficients are as indicated below:

SCHEDULE OF PERCENTAGE COEFFICIENTS

		A	B	C	D	E	F	
ITEM DESCRIPTION	2005	% Comp.	% Comp.	% Comp.	% Comp.	% Comp.	% Comp.	%
	PRICES	Lmat	Llab	Legpt	Fmat	Flab	Felpt	
	In Million US\$							
1. CW MRTS	304.96	0.72	0.03	0.10	0.00	0.00	0.00	0.15

2. CW Roadway	47.79	0.72	0.03	0.10	0.00	0.00	0.00	0.00
3. Trackworks	58.61	0.36	0.05	0.05	0.35	0.03	0.02	0.00
4. Signaling	44.07	0.02	0.02	0.01	0.72	0.03	0.05	0.00
5. Power Supply	91.32	0.02	0.02	0.01	0.72	0.03	0.05	0.00
6. Third Rail	22.46	0.02	0.02	0.01	0.72	0.03	0.05	0.00
7. Communication	18.33	0.02	0.02	0.01	0.72	0.03	0.05	0.00
8. Fare Collection	27.80	0.02	0.02	0.01	0.72	0.03	0.05	0.00
9. Escalator/Elevator	40.95	0.02	0.02	0.02	0.72	0.02	0.05	0.00
10. Depot Maintenance	27.30	0.02	0.02	0.01	0.72	0.03	0.05	0.00
11. Rolling Stocks	221.15	0.02	0.02	0.01	0.72	0.03	0.05	0.00
12. Program Manager	31.43	0.18	0.53	0.09	0.01	0.05	0.00	0.00
13. Owner Admin	18.08	0.18	0.53	0.09	0.01	0.05	0.00	0.00
14. Pre-op & Commis'g.	5.14	0.53	0.32	0.00	0.00	0.00	0.00	0.00
15. Proj. Close-out	4.42	0.53	0.32	0.00	0.00	0.00	0.00	0.00
16. Insurance	14.97							
17. Fin'l. & Legal Adv's'y.	13.46							
18. Financing Fees	17.00							
19. Interest at Const'n.	82.75							
20. Project Dev't	20.72							
21. DOTC Related Cost	30.91							
22. Contingency	75.00							
23. ROW	16.98							
TOTAL PRICES	1,235.60							

NOTES: 1. Items 16, 17, 18, and 19 shall be adjusted by direct proportion to the Total Prices.

2. Item 22 shall be adjusted by direct proportion to the EPC works (Items 1 - 11).

3. Items 21 and 23 shall be adjusted simply from the currency exchange (Peso to Dollar).

4. Item 20 shall be actual audited expenditure.

The adjustment for the items, Insurance, Financial and Legal Advisory Fee, Financing Fees, and Interest during Construction shall be by direct proportion of escalated Total Project Cost and the originally approved Total Project Cost (as of April 2005). The adjustment on the Contingency Budget shall be made by direct proportion of the escalated EPC cost i.e., Civil Works, Roadway, Trackworks, Signaling, Power Supply, Third Rail, Communication, Fare Collection, Escalator/elevator, Depot Maintenance Equipment and Rolling Stock and the originally approved EPC Cost (as of April 2005). The DOTC related cost and the right of way budget shall be adjusted in proportion to the currency exchange rates of the US Dollars to the Philippine Peso.

III Adjustment of the Amortization Payments

The adjustment of the amortization payments shall only be made after the submission by the contracting parties of the proposed price adjustments, based on the foregoing parametric formula, to concerned approving government authority based on existing laws, rules and regulations, and upon review and approval of such proposed price adjustments by such approving government authority.

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The computation of the adjustment of the yearly Amortization Payments amount indicated in Annex "D" shall be by direct proportion to the Total Project Cost in Philippine Pesos. The escalated yearly Amortization Payments amount for any given year shall be computed by using the following formula:

$$AAPE_n = AAPO_n \times [1 + (\sum (PiS_n - PoS_n) / 1,235.6)]$$

Where:

$AAPE_n =$ shall be the escalated yearly Amortization Payments amount for that given year.

$AAPO_n =$ shall be the original yearly Amortization Payments amount for that given year.

$\sum (PiS_n - PoS_n) / 1,235.6$ shall be the sum of the difference between the approved escalated prices and the originally approved prices of all the items in the Project Cost

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ANNEX "J"

CONFIDENTIALITY AGREEMENT

[Name of Inspection Firm]
[Address]

Attention : President/Chief Executive Officer

Subject : MRT Line 7 Project

Gentlemen:

This confirms our discussions regarding your proposed appointment as the Inspection Firm in relation to the MRT Line 7 Project (the "Project") pursuant to Section (8.5) of the Agreement between the Republic of the Philippines, through the Department of Transportation and Communications, and Universal LRT Corporation Limited.

Under the said provision, Universal LRT Corporation Limited shall provide and grant you access to relevant proprietary and confidential commercial, technical and legal information and data relating to the methodology and assumptions used by Universal LRT Corporation Limited in computing adjustments to Project Cost, the Systems Fees and other reimbursements in connection with the Project (the "Confidential Information") subject to your execution of a confidentiality agreement with Universal LRT Corporation Limited.

In this regard, your acceptance of your appointment as the Inspection Firm shall be conclusively presumed to include your agreement and undertaking to keep the Confidential Information strictly confidential during the term of your appointment as Inspection Firm until the completion and/or termination of the Project and for a period of two (2) years thereafter. Further, you agree and undertake not to disclose to any third parties, in any manner whatsoever, such Confidential Information without our prior written consent. You may disclose Confidential Information to your directors, officers, employees, advisors, and consultants ("Related Parties") on a need-to-know basis, provided that the said Related Parties likewise strictly adhere to the terms of confidentiality contained herein.

Unless otherwise agreed in writing, the Confidential Information shall remain our property at all times and no other party may use or obtain any rights in the Confidential Information. Further, you shall promptly return all written, electronic, video or other forms of the Confidential Information in your possession within seven (7) days after termination of this Agreement, unless sooner required by us in writing. In addition, you agree and undertake not to make and/or retain copies, extracts or other reproductions, in whole or in part, of the Confidential Information that may be in your possession.

This Agreement shall become effective from the date of your signing of this Agreement until the completion and/or termination of the Project and for a period of two (2) years thereafter or until otherwise agreed upon in writing by the parties.

Notwithstanding the foregoing, the following will not constitute "Confidential Information" for purposes of this Agreement:

- (A) Information which was already in your possession prior to your consideration of the Project;

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- (B) Information which we provided to you specifically on a non-confidential basis; and
- (C) Information which is or becomes publicly available.

This Agreement does not restrict any disclosure which is required by law, any competent court or tribunal, any competent authority, any relevant stock exchange, or pursuant to any rules, regulations or directions of any relevant regulatory body whether in the Philippines or abroad.

Should the foregoing terms be acceptable, please indicate your conformity by signing in the space provided below.

We look forward to having you on board.

Best regards.

Very truly yours,

Universal LRT Corporation Limited

By:

[Authorized Signatory]

Conformity:

[Name of Inspection Firm]

By:

[Authorized Signatory]

ANNEX "K"

LIST OF CONTRACTORS

- **Alstom Corporation of France**

Part of the Multi-Billion Dollar Alstom Group, Alstom transport is the world's second largest transportation systems provider, employing 28,000 employees in 60 countries, with a turnover of US\$5.2 Billion in 2002.

Alstom is the leading supplier of products, services, and systems to both urban and main line rail transport providers around the world. The company offers its customers a full range of rolling stock and equipment, and among the extensive range of products and services available are Alstom's urban (URBALISTM) and main-line transport (ATLASTM) signaling offers.

- **EEI Corporation**

The construction company of House of investment Inc – Member of the Yuchengco Group of the Philippines, one of the country's largest and strongest business conglomerates with interests in banking (RCBC), insurance (Malayan), manufacturing and realty development.

- **Earth Tech-A unit of Tyco International Company of the USA**

As member of the Tyco International Group in the USA, Earth Tech is a major force in global water management; environmental, remediation & waste; architecture, engineering & construction and transportation services.

- **Leighton Contractors (Asia) Limited**

One of Asia's leading contractors and project developers since 1975. Leighton Asia is part of the Leighton Group, Australia's largest project development and contracting group. The company operates in Hong Kong, Macau, China, Taiwan, Korea, the Philippines, Guam, Thailand, Vietnam, Laos & Cambodia employing around 2,500 people. The company focuses on the following market segments: civil & infrastructure; building; utilities services; facility & infrastructure management; and process and telecommunications.

- **TCGI Engineers Philippines**

An employee-owned consulting firm established in 1973. Its full-time in-house staff of over 400 engineers and architects of varied specializations and international experience, augmented by a complement of outside specialists, provides the company with an effective combination of specialized strength and broad coverage essential to multi-discipline consulting practice.

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ANNEX "L"

DUTIES AND SERVICES OF DOTC CONSULTANT

The Consultant will represent DOTC in overseeing the Universal LRT Corporation Limited/EPC Contractor and coordinate with various Government agencies for the successful implementation of the Project. The Consulting Engineer will be organized as follows:

1. Administration and Control Management

The Administrative and Control Management Department will be responsible for supervising and coordinating all functions relating to:

- o Administration
- o Claims Management and Coordination
- o Project Control
- This group will develop and maintain management control system for engineering / construction services, such as:

Scope Control

- Configuration Baseline
- Change Control
- Update Project Description

Cost Control

- Cost Baseline
- Performance Management
- Cost Forecast and Estimate Reviews
- Contingency Management

Schedule Control

- Schedule Baseline
- Performance Measurement
- Schedule Forecast and Review
- Contingency Management
- Contingency studies

Progress Report

2. Engineering Management

The Engineering Management Department is responsible for supervising and coordinating all functions relating to:

- o Revision to Concept Design

Engineering support services for project changes that will be implemented since the execution of the EPC Contract. The modification maybe applied in any of the following project scope:

- Station and route alignment from North Avenue cor. EDSA to San Jose del Monte, Bulacan including provisions for Commercial Development
- Tala Access road and the corresponding interfaces with NLEX and the Intermodal terminal
- Depot layout/Intermodal terminal at San Jose Station and interface with the bus parking facility and commercial development.
- The joint station with MRT-3 at SM City North Avenue
- Revision to the location of the rail transit stations or any MRT-7 structures impacted by utility companies' structures, ongoing and proposed government projects
- Environmental impact assessment/handicap station access requirement studies.
- o Design review and coordination of Design Review with outside Agencies
- Perform design review of EPC Contractor drawing and technical specification submittals for preliminary engineering intermediate submittals, unchecked final design submittals, and final design submittals.
- o Monitor manufacturing of Rolling Stock
- Supplementing the vehicle inspection services to be provided by the EPC Contractor, the Consulting Engineer will provide the services of a specialist vehicle engineer who will visit the manufacturer's facility, at least quarterly, to review progress and to witness vehicle acceptance testing prior to vehicle shipment.
- o Review of EPC Contractor/ULC/DOTC Proposed Alternative to the Concept Design

It is anticipated that the EPC Contractor will submit proposals throughout design development for changes to the concept design that will, in EPC Contractor's opinion, either improve the overall functional performance of the system or decrease the overall cost of the construction of the project. It is also anticipated that the ULC/EPC Contractor will continuously request changes or alternatives to obtain, in DOTC's opinion, improvements in the design development concept to obtain improvements in functional performance. Engineering staff shall address such issues as they occur or are recognized and will recommend resolutions to the Client.

- o Claims Management and Coordination Support

Engineering staff will support the claims management effort in identifying, quantifying and resolving engineering changes that may lead to a change in the cost or a change in time of performance of ULC/EPC Contractor based on the EPC Contract.

3. Construction Management

The primary responsibilities of the Construction Management Department is to ascertain that the Client receives from ULC/EPC Contractor a project that is in conformance with the requirements and of the quality set forth in the approved drawings and specifications; that the project is completed within the scheduled time agreed upon; that the EPC Contractor, during the construction period, maintains a safe, healthy site environment; that environmental issues during construction are mitigated to the extent agreed; and that the system is tested and turned over in acceptable operating condition. To this end the Construction Management Department will be responsible for supervising and coordinating all functions relating to:

- o Contract Administration

Staff services required relative to Contract Administration include those needed to review, validate and approve EPC Contractor progress payment request; evaluate, authenticate, and negotiate request for changes to the EPC Contract and prepare and process contract change orders; review all communication to and from the EPC Contractor, including construction drawings and technical specification, to assess impact, if any on the EPC Contract provisions.

- o Construction Inspection

Staff services for construction inspection include auditing the inspection performance of the EPC Contractor in determining whether or not the materials and construction labor techniques meet the level of the quality set forth in approved drawing and technical specifications.

- o Claims Management and Avoidance Support

Staff services for claims management and avoidance support include those services related to the identification, tracking and resolution of issues arising during and out of construction that impact on the EPC Contract.

- o Test, Acceptance and Turnover of the System

Staff services for test, acceptance and turnover include those services that relate to final inspection, witnessing of testing of equipment performance, documentation of the receipt of all ULC/EPC Contractor deliverables, and the turnover of the completed system for revenue service and final operations testing and start-up.

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ANNEX "M"

FORM OF CERTIFICATION OF SUBSTANTIAL COMPLETION

Contract : Construction of (description of the relevant phase)

Proponent : Universal LRT Corporation Limited

Contractor :

1. Description of completed work:

2. Undertaking by the Contractor :

We undertake to finish the outstanding remedial works on the Independent Certification Engineer/s list dated [].

Date : Signature :

3. Certificate of Independent Certification Engineer :

We certify that the works, as described in 1, above, were substantially completed on _____, except in minor aspects that will not affect the commercial operation of the project.

Date : Signature :

[Handwritten signatures]

